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**Submission to the Inquiry into Social Security  
Legislation Amendment (Job Seeker Compliance)  
Bill 2011**

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by the National Welfare Rights Network 12 April 2011

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# 1. About the National Welfare Rights Network

The National Welfare Rights Network (NWRN) is an incorporated national peak body representing Welfare Rights Centres throughout Australia. NWRN members are specialists in social security law and policy and its administration by Centrelink and provide direct advice, assistance and representation to clients on a daily basis facing Social Security, Centrelink and Employment Service Provider related problems. The NWRN draws on this daily casework experience to analyse systemic problems and trends, legislation and service delivery issues and raises these with Centrelink, relevant Government Departments and Ministers in order to achieve reform and a better system for all.

Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, advocates for reforms to law, policy and administrative practice and participates in campaigns consistent with its aim to reduce poverty, hardship and inequality in Australia and to build a fair, inclusive and sustainable Australia underpinned by a comprehensive, rights based Social Security safety net for all.

The NWRN advocates that the social security system in Australia should be characterised by an uncompromising recognition of the following rights:

- the right of all people in need to an adequate level of income support which is protected by law;
- the right of people to be treated with respect and dignity by Centrelink and those administering the Social Security system;
- the right to accessible information about Social Security rights and entitlements, obligations and responsibilities;
- the right to receive prompt and appropriate service and Social Security payments without delay;
- the right to a free, independent, informal, efficient and fair appeal system;
- right to an independent complaints system;
- the right to independent advice and representation; and
- the right to natural justice and procedural fairness.

## **2. The role of an effective compliance system**

The NWRN believes that the social security system in Australia has both rights and entitlements which stand alongside obligations and responsibilities. This necessitates the inclusion of a compliance regime. However, any compliance system must be fair, effective and easy to understand. The challenge is to get the balance right. To be effective, the system must improve job search efforts and increase successful employment outcomes, thereby reducing social security expenditures and improving people's lives.

The purpose should not be to "punish" job seekers or seek to be either "tough" or "soft" on unemployed people, but to engage people in purposeful activities which assist in removing barriers to work and move them closer to obtaining employment.

A small number of people wilfully flout the rules and their behaviour potentially stigmatises all other job seekers. However, it is costly and unwise to build an entire compliance framework on the basis of incorrect assumptions that unemployed people are individually and generally "malingers".

## **3. What will a tougher approach to job seeker compliance achieve?**

The problem of non-attendance at interviews has been a historic feature that the Government, employment service providers and community stakeholders have all acknowledged needs to be addressed. This Bill, however, is not the way forward.

It is important to understand what this Bill will achieve and what it will not. The changes proposed in this Bill will not:

- increase job seekers willingness to engage with providers;
- reduce the high level of turnover among employment service providers; or,
- assist in attracting potential staff who want to build a career in helping disadvantaged people into work and to overcome barriers.

But, the changes proposed in this Bill will:

- undermine the already low levels of job satisfaction among current providers;

- undermine the trust and confidence in employment service providers and Centrelink;
- potentially increase instances of aggression towards employment service providers and Centrelink staff;
- heighten the level of aggression in Centrelink offices and cause additional stress and danger for both staff and other clients;
- reinforce the belief that a focus on “participation” and “engagement” is predicated on punishment and a punitive approach to job seekers;
- increase the risk of homelessness for very vulnerable people;
- leave some job seekers with less financial capacity to meet essential expenses; and,
- reduce the ability of job seekers to undertake requirements agreed to in their Employment Pathway Plans aimed at getting into work or overcoming barriers to employment.

## **4. Suggested amendments to the Bill**

This section details the reasons for making changes to the current Bill to eliminate the real possibility of manifestly unfair and arbitrary outcomes. In our view, the Bill should not proceed and the recommendations outlined in section 7 should be implemented. The issues raised in this section of our submission are, therefore, put in the alternative.

### **4.2 “Special circumstances”**

The Bill introduces a temporal limitation on the concept of “reasonable excuse” for a participation failure. The Bill provides that an excuse cannot be considered a “reasonable excuse” unless the person notified the relevant person/organisation of the excuse before the appointment/activity/contact is missed. That is, the excuse cannot be considered a reasonable excuse if it was not notified beforehand.

A requirement to notify beforehand if you cannot attend an appointment would be supportable requirement if the exceptions were clear and fair. We have grave concerns, however, about the provision relating to the exception from the requirement to notify beforehand.

An exception may be made if the Secretary considers that there were “special circumstances” in which it was “not reasonable to expect” the person to give the notification prior to the failure. The problem is the requirement that the circumstances be “special”. As a matter of statutory construction, and elsewhere in the *Social Security Act 1991* (the Act) courts have given lengthy consideration to the word “special” and the term “special circumstances”. Also in policy there is a tendency to only treat as “special” something that is out of the ordinary, uncommon, unforeseen or exceptional.

There is a likelihood that requiring the circumstances to be special may result in situations unforeseen and unintended by the Department of Education, Employment and Workplace Relations (DEEWR) which will cause unjust hardship to jobseekers who nonetheless have a perfectly reasonable excuse for failure to notify in advance of their inability to attend.

For example:

- A person who has no credit remaining on their mobile phone, or whose mobile phone battery is flat or lost (as often happens with young people) might have reasonable excuse but fall short of “special circumstances” because arguably, running out of credit or battery life is not “special” or uncommon, unusual or exceptional. We note also that calling Centrelink or an employment service provider can involve a lengthy wait which can significantly deplete low telephone credit.
- A person who is temporarily unwell or distressed and therefore forgot, or “couldn’t quite get it together” to call (as distinct from couldn’t be bothered to call) would fall short of “special circumstances” because arguably, such a situation is not “special” although, in that persons case, it may well have been unintended, understandable and reasonable.
- A person who obtains casual work, which starts at 7am may not be able to contact their job services provider until the office opens at 9am, at which time the person is already working and unable to make the call to cancel their appointment that morning. Such a situation would be perfectly reasonable but may not be “special” enough for these purposes, because it is not an uncommon thing for a person to be unable to make calls during

work hours. Thus the person would be punished financially for having obtained work.

- Using Minister Ellis' own example reported in *The Australian* on 8 April 2011, a job seeker who has care of a child may now have to show that their child had a "serious accident" to justify the missing of an appointment. The fact that a child's school called and asked the job seeker to collect the child may well be disregarded under the new rules because this situation is not special enough.<sup>1</sup> A child's illness may or may not be "special".

The key point is that the word "special" is surplus to requirements. There is no need for the exception to have dual requirements; that is, to be both "special" and "reasonable". It is enough that it must not be reasonable to expect the person to have to give the notification in the circumstances. We have been told informally, and understand, that it is not intended that the word "special" apply in a similar way to other places in the *Social Security Act 1991* (the Act). Nevertheless we are concerned that when the question does come before a tribunal or court, as inevitably it will, the tribunal or court may have no option than to apply a stricter interpretation on the word special than was intended by the drafters.

The word "special" is not necessary to achieve the outcome being sought by the Government and carries a serious risk of causing unfair and unjust outcomes in a manner not foreseen by the drafters. We submit that it ought to be removed.

#### **4.2 Measures to protect against potentially disproportionate penalties**

We are concerned by the provisions for suspension without back-pay after a failure to reconnect. Our concern is that there is no mechanism in the Act to limit how long such a suspension may last, and therefore no mechanism to limit the length of the potential penalty. DEEWR indicated in discussions on the Bill with NWRN that the policy which will be in place for implementation of these provisions will reduce the length of the potential penalty in the sense that, if a reconnection appointment/activity is not available within two working days, then the suspension will cease (so that essentially, the person does not incur a larger penalty simply because of the lack of availability of a reconnection appointment).

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<sup>1</sup> Karvelas, P, *The Australian*, *No show job seeker rules to tighten*, 8 April, 2010.

We consider that this policy is sound but is insufficient protection against the potential for lengthy suspension with no back-pay.

For example, a penalty may stretch well beyond two days (up to several weeks) where a person fails to attend a reconnection appointment, but cannot then be contacted by Centrelink (so regardless of the availability of appointments within two days, no appointment can be made).

If the person's failure occurs at the beginning of their fortnightly instalment period, they may lose a whole fortnight of payment (and may not realise it until their payday; for example, where the person was confused about which appointment to attend or for some other reason did not realise their failure). Theoretically it is possible that a person could potentially be suspended under this provision without back-pay for an unlimited period (although we accept that in practice it would be unlikely to extend beyond a month as general cancellation provisions would apply at that point).

This is of particular concern where, after missing an appointment with no reasonable excuse, a person then experiences circumstances reducing their capacity and is unable to contact or be contacted (for example, falling ill the next day). Moreover, if a person didn't notify beforehand of their inability to attend, Centrelink may not be able to apply the reasonable excuse provision if person doesn't also have "special" circumstances as to why they were unable to notify beforehand.

Finally we note that, in the absence of new appointments being made and missed, there is nothing to trigger a Comprehensive Compliance Assessment (CCA) during the period as new failures are not being incurred.

A CCA trigger in the current system can result in a thorough examination into a person's barriers. It is an essential "circuit breaker" that can lead to improved levels of engagement and assist in the disclosure of existing barriers that were previously unreported or unrecognised.

We note that all policy is subject to change without notice or parliamentary scrutiny. We therefore submit that protections against the potential for disproportionate financial penalties should instead be enshrined within the body of the Bill. The Bill

should be amended to include a provision that any penalty should effectively cease where:

- there is no available reconnection requirement that can be made during the next two working days; or
- the person has a reasonable excuse for not being able to attend a reconnection appointment within the next two working days; or
- there are more than two working days left in the person's fortnightly instalment period and attempts to make contact with the person have been unsuccessful.

Further, we note that the penalty is calculated on a daily basis (one fourteenth of the person's fortnightly pay per day during reconnection failure period). This means that a person for whom a weekend falls within the two working days for reconnection will incur a penalty of up to four days, whereas a person whose reconnection failure period does not include a weekend will incur a penalty of up to two days (these examples include an assumption that the person does comply with the reconnection requirement). We consider that the Act should include a provision to address any unfair or inconsistent outcomes which can result in a person being financially penalised for longer periods purely because of the day in the fortnightly payment cycle on which it fell.

#### **4.3 Same day notification for requirements**

The Bill provides that a person can be notified of a reconnection requirement for the same day; for example, they may be notified in the morning of a reconnection requirement that same afternoon. We understand that the policy intent is to capture more regional remote customers while they are already in town. It is important, however, that some protection be built into the legislation for such people to ensure that they are not required to "put off" medical appointments etc.

#### **4.4 Timing of financial penalties**

Currently, Centrelink cannot deduct the penalty in the pay period in which the person was notified of the failure, it will be deducted at least the fortnight after. This Bill seeks to change the rules around the loss of payment. Our submission is that the rules about the timing of financial penalties should remain as they currently are.

The timing of the imposition of penalties was examined by the 2008 Senate inquiry into the legislation where NWRN made the following points.

*“The only way this system can operate fairly is to have the deduction, even if only one day’s pay, taken from the next fortnight’s payment, the one after the fortnight in which the infringement occurs. On any other approach there is a very real risk that a job seeker will not be afforded natural justice before the penalty is imposed (especially if it occurs in the latter half of the cycle) because there will be insufficient time for either Centrelink to conduct a thorough investigation of the matter or for the jobseeker affected to have had a reasonable opportunity to present their case in response to the assertions being made against them.*

*“Whilst it may be possible for Centrelink to make a decision in accordance with the principles of natural justice if the failure occurs in the first couple of days of the payment fortnight, it will be virtually impossible for this to happen in the latter part of the fortnight.”<sup>2</sup>*

Financial penalties, even small ones, can have major impacts, especially when Newstart and Youth Allowance payments are so low. A No Show No Pay penalty can result in the loss of \$34 for each day that a person loses their payment.

Some job seekers will receive just one day’s warning that they will lose \$34 from their next payment, while others could be given just three days’ notice that they are losing almost half of their weekly income. Having lost \$112 for the three days they failed to re-engage a job seeker will have just \$125 to meet essential expenses for the rest of the week. While job seekers can “work off” some eight week penalties, this is not allowed with smaller, daily financial penalties.

NWRN is deeply concerned about the possible consequences resulting from the loss of even one or two day’s pay. People who are in paid employment may have at least some access to carer’s leave or sick leave so they may not necessarily be placed in as much financial stress when difficult circumstances arise in their life.

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<sup>2</sup> National Welfare Rights Network, Submission to the Senate Standing Committee on Employment, Education and Workplace Relations, *Social Security Legislation Amendment (Employment Services Reform) Bill 2008*, p. 36, November 2008.

## 5. General submissions

### 5.1 Risks for vulnerable jobseekers and people with complex needs

Despite recent media reports stating that “vulnerable” job seekers or job seekers with what are termed a Centrelink “vulnerability indicator” will not be subject to the tougher compliance rules scheduled from 1 July 2011, this is not the case.

We understand that under the proposed regime a person who is known by Centrelink to have an existing vulnerability will be contacted by Centrelink and will be interviewed and warned that if they miss a third interview they will be subject to the compliance rules applying to other job seekers. The existence of a “vulnerability flag” will not necessarily mean that they will not be subject to compliance action.

Job seekers with a mental illness, who are homeless, at risk of homelessness, or who have recently experienced domestic violence will have to prove that the event of non-attendance was a direct result of their vulnerability for it to be considered a “reasonable excuse”. Additionally, they will also be required to meet the complex and unfair “special circumstances” requirements that were outlined earlier.

People who have failed to disclose sensitive and personal information about problems such as sexual abuse, bullying, mental illness or mild intellectual disability or an acquired brain injury will be faced with a major dilemma if this Bill proceeds. They may face a financial penalty because they fail to disclose or recognise the existence of barrier, and may easily fall foul of the complex set of rules governing job seeker behaviour.

The situation will also be difficult for a person who may not recognise the existence of a medical or mental health condition or be unwilling to accept that they have a specific vulnerability. The Commonwealth Ombudsman has reported extensively on the difficulties that people in these circumstances face in the dealings with Centrelink and employment service providers.

It is distressing that people who are vulnerable, experiencing mental illness or homelessness will be caught in the compliance system. This runs counter to the

Government's stated policies around homelessness, and works against the commitment by the Government to halve homelessness by the year 2020.<sup>3</sup>

Under the previous compliance arrangements in place between 2006-09 NWRN, along with a wide range of other community organisations were rightly critical of the approach that saw significant numbers of people with mental illness and of those at risk of homelessness or actually homeless lose their income support payments.

Surveys of job seekers by DEEWR found that penalties had a corrosive effect on the motivation of job seekers and on their ability to look for work. The following extract is highly relevant to the current Bill: It found:

"...the imposition of an eight week penalty made around 50 per cent of job seekers more motivated to find work. However, around 75 per cent of job seekers reported that having no income support made it harder to look for work, with over 50 per cent reporting that it made it a lot harder."<sup>4</sup>

The Committee should carefully consider the current compliance arrangements, in light of the following analysis by DEEWR who argued that an eight week penalty is not successful in compelling job seekers to find sustainable employment:

"75 per cent of job seekers who receive an eight week non-payment penalty are soon back on benefits, most of them within a fortnight of finishing their non-payment period."<sup>5</sup>

The numbers of people with a mental illness or who are homeless or at risk of homelessness who have faced penalties since the new system was introduced on 1 July 2009 should be of significant concern to the Committee. Between July 2009 and August 2010 more than 1,250 people with a mental illness who have been identified as being homeless or being at risk of homelessness have been caught in the Centrelink penalties regime that the Government argued was much fairer than the scheme it replaced.

Between July 2009 and August last year 52 job seekers who identified as homeless, including those at risk of homelessness received an eight week no payment penalty

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<sup>3</sup> Commonwealth Government, *The way home: a new approach to homelessness*, 2008.

<sup>4</sup> Department of Education, Employment and Workplace Relations, *Submission to Employment Services Reform Bill, 2008*.

<sup>5</sup> *Ibid*, p. 3.

and 244 received one or more No Show No Pay penalties, under which job seekers lose payment for each day they fail to undertake an activity.

Over the same period 109 people whose Centrelink records indicate that they have a mental health condition lost payments for eight weeks, and 857 received one or more No Show No Pay penalties.

Given the recent surge in both larger and smaller financial penalties, and our understanding that record numbers of “participation failures” are being reported in February and March 2011, NWRN holds serious concerns that large numbers of vulnerable income support recipients are facing financial penalties that they can ill-afford.

## **5.2 Complexity now a major problem**

Welfare Rights is concerned that job seekers will struggle to understand just how the new system will work, their obligations under it, and this goes to the heart of striking the balance between rights and entitlements and obligations. In our experience Centrelink and Job Service Australia providers have found it difficult to both understand and to explain to job seekers exactly how the new system works.

The level of complexity is a problem on many fronts. Most importantly, it is a significant problem for job seekers, and particularly for disadvantaged job seekers, many of whom have limited schooling and experience high levels of illiteracy and innumeracy. Three out of every five people who are long-term unemployed lack year 12 qualifications or equivalent, and rates of school completion are almost double that of people of working age generally.

The recent report from Australian Skills Council that two in five adults experience difficulties reading and that 53 per cent have very low literacy skills highlights the extent of the challenge that many people face in meeting Centrelink’s complex reporting requirements. Given that 60 per cent of job seekers have failed to complete year 12 it is clear that large number of job seekers will struggle to understand the complex machinations of the compliance regime.

The new compliance arrangements introduced in 2009 did not simplify the compliance system, rather it complicated them further. The framework is complex and unwieldy and the existing model includes five categories of failures and penalties:

1. no show no pay failure;
2. connection failure;
3. reconnection failure;
4. serious failure; and,
5. unemployment non-payment period.

The pleas for a simpler system that were made through the Independent Compliance Review (the Disney Review) unfortunately fell largely on deaf ears and the changes scheduled for July 2011 will only increase the level of complexity for all concerned. We strongly urge the Committee to seriously consider the consequences of the system's complexity on job seekers who may be illiterate or have learning difficulties or on job seekers who have an acquired brain injury.

The compliance regime is cumbersome and a costly exercise for Centrelink to implement. The unnecessary level of complexity has the real potential to result in a higher rate of error in Centrelink's implementation of the system resulting in significant hardship to job seekers. This extraordinary level of complexity has also contributed to frustration for providers, errors and is also contributing to the high levels of rejection rates of failures by Centrelink.

Added to the multiple categories of failures and penalties, is another layer of complexity because the principles and rules underpinning each category vary and are inconsistent. For example, some categories have reasonable excuse provisions whilst some do not. Even within categories, some failures have reasonable excuse provisions whilst some do not. Some categories enable a person to shorten or avoid a potential penalty by taking up certain activities (e.g. training or work experience) whilst others do not. Some provide discretionary powers to a decision maker whilst others do not. Some have hardship provisions whilst others do not.

### **5.3 The limits on discretion**

DEEWR is at pains to suggest to welfare and community groups that the new tougher approach to compliance is no cause for concern or alarm because employment service providers will retain the option of using their discretion giving jobseekers the benefit of the doubt and could choose to lodge a “contact request” instead of a “participation report” or to reschedule the appointment.

There are in reality, a number of key factors that work against that supposition. First, one of the key lessons from the recent history of the compliance arrangements in Australia informs us that providers respond to “messaging” from Ministers and Department Heads. Note, for example, the messaging from Ministers Abbott and Vanstone and former DEEWR Departmental Secretary Peter Boxhall around the period of the 2000 Olympics, the message from former Minister for Employment Participation, Brendan O’Connor in 2008 and Assistant Secretary Ms Golightly in 2008.<sup>6</sup>

Secondly, significant pressure is applied to providers from the DEEWR contract management arrangements which require quick decisions to be made about applying Participation Reports or if not, providing reasons why the failure should not be applied. The DEEWR system demands quick immediate responses, and given large caseloads, micro-management of the contracts, and the extremely time-consuming nature of meeting DEEWR requirements to satisfy their requirements, many providers may push the key stroke for generating a participation failure.

### **5.4 Centrelink penalties on the rise and rise**

The Committee’s deliberations about the Government’s plans to apply harsher rules on job seekers from 1 July 2011 are occurring at a juncture when the numbers of eight week no payment penalties and “participation failures” are increasing at a dramatic and alarming rate.

Welfare Rights analysis of trends in the first 20 months of the 2009 compliance system reveals some very disturbing trends. For example, in the three months to

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<sup>6</sup> Peatling, S. *Please be nice to jobless, minister instructs agencies*, Sydney Morning Herald, 27 August 2008 and Peatling, Stephanie, *Job agencies told to review practices*, 29 January 2008.

December 2010 there was a 66 per cent increase in the numbers of eight week no payment penalties applied to job seekers. More alarming is our finding that Indigenous job seekers carry a disproportionate burden of the smaller “no show no pay” and “reconnection penalties”, where payments are lost at a daily rate (either a tenth or a fourteenth of the fortnightly benefit).

An important question for the Government to answer with respect to the surge in penalties on job seekers is: has the increase in compliance action resulted in an increase in employment and engagement?

In the six months 1 July 2010 to 31 December 2010 Centrelink applied 9,668 eight week eight week no payment penalties.<sup>7</sup> This is only 1,170 less than the entire previous twelve months, when 10,838 were applied. In this six month period only 28 job seekers penalised were eligible for payment under stringent financial hardship rules.

After three participation failures in a 12 month period job seekers are assessed by Centrelink to determine if they are “persistently non-compliant”. This involves undergoing a Comprehensive Compliance Assessment (CCA) and a thorough examination of their circumstances. In 2009-10 just 478 job seekers were assessed in this category, rising to 500 in the three months to September 2010, increasing sharply to 1,979 in the December 2010 quarter.

The numbers of smaller financial penalties also exploded. In the six months to December 2010 Centrelink applied 26,393 smaller financial penalties. This is more than were applied in the entire previous year (2009-10), where job seekers were hit with 22,053 no show no pay and re-connection penalties.

In the September 2010 quarter 15,466 smaller financial penalties were imposed, with an additional 20,615 applied the following quarter.

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<sup>7</sup> NWRN acknowledges the significant effort that DEEWR has gone to ensuring the data available, especially in the development of useful data sets, based upon the data profiles from the Disney Review.

This brings the total number of Centrelink financial penalties over the most recent six month period to 36,061. In the previous year (2009-10) there were 32,891 financial penalties applied on job seekers. It is critical to note that there has been no change to the compliance policies over this period, but penalty number across the board jumped in excess of 100 per cent.

An analysis of data from the 20 months that the current arrangements have been in place reveals that Indigenous job seekers carry a disproportionate burden of the small no show no pay and reconnection penalties. While Indigenous job seekers account for just eight per cent of all job seekers, they make up almost 25 per cent of all participation failures that have a financial impact. Over the period, a total of 9,255 participation failures that had a financial impact were imposed on Indigenous job seekers, and 1,908 eight week penalties imposed on Indigenous job seekers. Indigenous job seekers are the subject of 10 per cent of eight week no payment penalties.

Since 1 July 2009 a total of 68,027 financial penalties were imposed on non-Indigenous job seekers. Broken down, this has led to 18,033 eight week penalties and 38,831 smaller no show and reconnection penalties on non-Indigenous job seekers.

In total, there were 19,941 eight week penalties, and 48,086 smaller financial penalties since the Government overhauled the compliance regime of the previous Government.

### **5.5 Participation Reports surge – at what cost?**

In the three month period to December 2010 135,587 Participation Reports were submitted by ESP's. Centrelink applied 49%, and of the 51% rejected by Centrelink, 68% of these were found to have a valid reasonable excuse (almost 47,000). Welfare Rights estimates that Participation Reports are flooding into Centrelink offices at a rate of around 2,300 a day. These reports need to be carefully investigated by Centrelink's National Participation Solutions Team (NPST). This exercise involves significant cost and NWRN urges the Committee to ask Centrelink to explore the cost of this processing and investigations, and the impact on Centrelink services and resourcing.

## 5.6 The Disney report on appointments

The Government is ignoring the findings of the Independent Review it commissioned which concluded that there were no solid grounds to toughen the compliance regime in the way now indicated by the Government.

The Minister for Employment Participation, Kate Ellis, was recently questioned about welfare groups' claim that the changes were not supported by the recent Disney Review. The Minister stated that the Disney review "*said that if the trend wasn't improving within twelve months or so, then the government should act.*" This is a reasonable interpretation of what the report stated, though the "action" that the Government has decided to take is the opposite of what Disney believed to be appropriate.<sup>8</sup>

It is useful to consider what the Disney Report actually said about the matter.

*"(T)here appears to have been only a modest increase under the new system in the attendance rate at appointments with providers, rising to 58% from 56% in the previous year. Unfortunately, the data are not sufficiently disaggregated to enable detailed analysis and confident historical comparisons.*

*"Although the rate of attendance at appointments has increased a little under the new system, in the absence of further improvement there may be a case for imposing a financial sanction for Connection Failures in some circumstances. If further experience of the new system demonstrates that such a course would be appropriate, the substantial risk of causing undue hardship requires that any penalty should not apply to vulnerable job seekers and should be repayable when the jobseeker agrees to another appointment."<sup>9</sup>*

In terms of actions for recommendation the Disney Report stated:

*"If further and significant improvements are not achieved within the next 12 months or so in jobseekers' attendance rates at appointments with providers, consideration should be given to Centrelink having discretion in specified circumstances to suspend payment as the result of a Connection Failure."*

"This discretion should be exercisable where:

- the job seeker is in Stream 1 or 2 and is not the subject of a Vulnerability Indicator;  
and

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<sup>8</sup> The Hon Kate Ellis MP, Minister For Employment Participation and Child Care, *Transcript of interview with Lyndal Curtis, ABC 24, 23 March 2011.*

<sup>9</sup> Disney, J, et al, op cit, p. 55.

- the missed appointment had been agreed with the job seeker by Centrelink (for example, as the result of a Contact Request by the provider)."<sup>10</sup>

The Government's policy as evidenced in the Bill before the Committee is the antithesis of the changes Disney suggested in relation to back-pay, protection for vulnerable jobless people, and timing. The real problem in rushing to a new system when the current one is still in its infancy is that Centrelink and the Government really does not understand the extent of the problem, and why job seekers are failing to turn up to appointments or activities.

The level of non-attendance at interviews with providers has essentially been static over the past decade – as noted in the Disney Review. In the last quarter of 2009-10 the numbers not attending appointments was 59 per cent, though DEEWR data on non-attendance the following two quarters of 2010 reveals a return to historic averages of a non-attendance rate of 56 per cent.<sup>11</sup>

During Job Network 3 over the period 2003-06 job seekers attended just over 50 per cent of scheduled Intensive Support Customised Assistance (ISCA) appointments with this proportion declining slightly over the three years.<sup>12</sup>

DEEWR's *Active Participation Model Evaluation* found that failure to attend appointments was more prevalent amongst young people, Indigenous people, people with less than year 10 level education, those who have never worked and those in less accessible labour markets.

While the focus on a headline number on the 55 per cent of job seekers who fail to attend appointments, it is critical that the Committee examine the data around non-attendance and place these number in their proper context. There are legitimate reasons why many miss appointments (for example, some jobseekers are working in legitimate workplaces or are no longer eligible for income support). Additionally, the percentage of jobseekers not attending interviews includes significant numbers of jobseekers who have valid reasons for why the appointments are missed.

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<sup>10</sup> Disney, J, et al, op cit, p. 81.

<sup>11</sup> Department of Education, Employment and Workplace Relations, *Job Seeker Compliance Data, 2009-10*.

<sup>12</sup> Department of Education, Employment and Workplace Relations, *Active Participation Model, 2003-06 Evaluation*, p. 4.

For example, in 2009-10 an average of 20 per cent of job seekers who failed to attend appointments had a valid reason for not attending appointments. Additionally, 21 per cent of job seekers had at least one vulnerability indicator, which meant that they may have been experiencing homelessness or at risk of homelessness, have a mental illness, have been a victim of domestic violence, etc.<sup>13</sup>

The most recent compliance data, detailed below for the December 2010 quarter shows 55%.

Of the 45% who failed to attend:

- 21% had a “*valid reason*”, that is, the provider considers that the job seeker had a reasonable excuse for not attending the appointment;
- 15% had an “*invalid reason - PR submitted*”, that is, the provider considers that the job seeker did not have a reasonable excuse for not attending the appointment, or has been unable to make contact with the job seeker however the provider decided that a PR is the most appropriate method for re-engaging the job seeker; and
- 9% had an “*Invalid reason - PR not submitted*”, that is, the provider believed that the job seeker did not have a reasonable excuse for not attending the appointment, or has been unable to make contact with the job seeker, but the used their discretion and decided that a PR is not the most appropriate method for re-engaging the job seeker. The provider may have rescheduled the appointment or, if unable to make contact, submitted a Contact Request.

Thus, under close analysis of the data, providers are deciding under the current system that there are much more effective ways to engage with job seekers. Providers will be under significant pressure to apply penalties if the Bill proceeds. On grounds of cost, administrative complexity and a critical analysis of the problem, there is a weak argument and poor evidence base for the harsher approach that the Government is proposing.

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<sup>13</sup> Disney, J. Buduls, A. and Grant, P. *Independent Review of the Job Seeker Compliance System*, September 2010.

## **6. Millions wasted on review and complaints**

If the harsher approach to penalties goes ahead, it could cost millions to the Federal Budget because of the clear and irrefutable evidence of the link between appeals, complaints and the compliance system.

A likely outcome of this legislation is an increase in the number of appeals to Centrelink, at the level of the Original Decision Maker, the Authorised Review Officer level, and to higher level review bodies, including the Social Security Appeals Tribunal and the Administrative Appeals Tribunal and the Commonwealth Ombudsman.

### **6.1 Social Security Appeals Tribunal**

In 2007-08 there was a 35% increase in the number of applications for review into a Centrelink decision lodged with the SSAT compared to the number of applications lodged in the previous year. The SSAT Annual Report states this “dramatic” increase is attributed “to the increase in appeals related to Newstart Allowance that saw an increase in appeals of 140 per cent. Over half of these appeals concerned so called “participation failures” where Centrelink determined that the work efforts were not sufficient.

In 2008-09 there were 3,108 Newstart Allowance recipient appeals lodged at the SSAT. The SSAT reported that this increase in penalty-related work led to a delay in examining complaints by income support recipients about Centrelink payments and debts and the result was that at the end of June 2008, 2,407 applications were at hand – double the level of the previous year.

The SSAT annual report in 2009-10 received 11,203 applications, a decrease of 16.5 per cent on the previous year. This decrease in applications can be attributed mainly to a reduction in Newstart reviews, which reduced from 3,799 reviews in 2008-09 to 2,017 in 2009-10.<sup>14</sup>

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<sup>14</sup> Annual Report, *Social Security Appeals Tribunal and Centrelink*, 2009/10.

NWRN notes that there is a financial impact or poor decision making by Government agencies, such as Centrelink, and that average cost of reviews to the Social Security Appeals Tribunal in 2009-10 was \$1,858.

## **6.2 Commonwealth Ombudsman**

Commonwealth Ombudsman is the other main public agency that deals with complaints about Centrelink. The Commonwealth Ombudsman 2009-10 annual report also reveal a noticeable decline in complaints about Centrelink, with complaints falling by 28 per cent, from 7,226 in 2008-09 to 5,199 in 2008-09.

Informal discussions with the office of the Commonwealth Ombudsman have confirmed that the 2009 changes to the compliance regime is a major reason for this decline in complaints.

## **6.3 Centrelink**

Data on Centrelink's internal reviews also indicated a decline in overall complaints, from 207,871 in 2008-09 to 186,718 to in 209-10. While Centrelink's annual reports do not provide a breakdown by category of complaints, we understand that a reduction in appeals related to participation failures, along with a fall in appeals related to economic stimulus payments and bonus payments, are behind this reduction in the number of internal appeals.

It is relevant to note here a recent Commonwealth Ombudsman's report highlighted that the Centrelink review and appeals process was deeply flawed. The additional weight of complaints about social security penalties will only compound the problems in a system that already is under significant pressure.<sup>15</sup>

## **6.4 Impact on access to independent legal advice and assistance**

Any changes that increase the numbers of social security penalties will in turn have significant flow on effects in the form of increased caseloads for the Centres that are part of the National Welfare Rights Network. All of these services, like many community agencies, are already under considerable pressure.

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<sup>15</sup> Commonwealth Ombudsman, *Centrelink: the right to review – having choices making choices*, 16 February, 2011.

The experience to date is that there is a direct correlation between Government approaches to compliance, the number of appeals, and the financial impacts and costs to existing complaint and review schemes and community legal centres, including Welfare Rights Centres.

While agencies such as Centrelink and other Government-funded agencies such as the Commonwealth Ombudsman and the SSAT may be able to meet the additional costs imposed which flow from the greater demand for assistance with complaints and reviews, organisations such as Welfare Rights services across Australia are left with few options but to ration assistance and choose between clients.

## 7. Recommendations

**Recommendation 1:** That the Bill be rejected.

**Recommendation 2:** That the Government instead focus on building the strengths of the current system and proceed with implementing recommendations from the Disney Review, many of which would lead to a greater level of engagement and attendance at appointments. Among the suggestions we proposed that the Government consider are:

- undertaking an independent review with a view to consistency and streamlining approaches and guidelines across DEEWR, Centrelink and Jobs Services Australia;
- maintaining the core elements of the current system that are working well, including comprehensive compliance assessments, review and appeals and the ability to “work off” some penalties;
- significantly reduce the eight week no payment penalty;
- reduce complexity and increase consistency in the system by, for instance, standardising the rate of payment losses to 1/14<sup>th</sup> of a Centrelink payment, and allowing job seekers to access “work off provisions”;
- enhance the sharing of information between Centrelink and employment service providers about client barriers and vulnerabilities;
- offer a “contact person” for job seekers with vulnerabilities;
- offer intensive support to job seekers who regularly seek to change appointments

- or change providers; and
- examine access to employment assistance and any unfair barriers experienced by job seekers in rural and remote areas, by undertaking a review of assistance in rural areas as recommended by the Disney Review.

**Recommendation 3:** That a glaring injustice in the existing system for people who incur 8 week non-payment periods due to becoming unemployed due to voluntary act or misconduct be rectified. This provision is particularly unfair for people who are about to receive Centrelink payments for the first time and are unaware of the penalty at the time they leave work. Worse still, unlike others who incur eight week non-payment penalties, these people cannot undertake a compliance activity to “work off” the penalty and cannot have the penalty waived, despite desperate financial circumstances, unless they fit into a very narrow “class of persons” determined by the Minister.

That this piece of legislation should be amended to provide that people in such situations may “work off” the penalty, and made the system consistent in its rules.

**Recommendation 4:** If the Bill is to proceed, that DEEWR engage with industry and community stakeholders on the development of training material, changes to the Social Security Guide, and any guidelines to support “reasonable excuse” or “special circumstances” provisions or any other material flowing from the passage of the legislation, if passed.

**Recommendation 5:** If the Bill is to proceed, that a cost benefit analysis of the proposed changes be undertaken.

**Other recommendations:** If the Bill is to proceed, our recommendations for specific amendments are contained in recommendations 2 to 4 above.