

The Senate

Community Affairs
Legislation Committee

Social Security Legislation Amendment
(Stronger Penalties for Serious Failures)
Bill 2014 [Provisions]

August 2014

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44th Parliament

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Participating members for this inquiry

Senator Claire Moore	Queensland, ALP
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LIST OF RECOMMENDATIONS

Recommendation 1

2.54 The committee recommends that the Bill be passed.

Chapter 1

Introduction

Referral

1.1 On 17 June 2014 the Senate referred the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 (Bill) to the Community Affairs Legislation Committee (committee) for inquiry and report by 26 August 2014.¹

Purpose of the Bill

1.2 The Bill seeks to ensure that more jobseekers meet their mutual obligation requirements and transition from welfare to gainful employment.²

The Bill will help restore the integrity of our welfare system and ensure available resources are used effectively and efficiently... The ability to waive the penalty means that job seekers who commit a serious failure can avoid the financial consequences of their actions, and continue to receive income support, despite their poor behaviour.³

1.3 The Bill would give effect to the government's commitment to strengthen jobseeker compliance frameworks by ensuring that penalties are applied more rigorously where jobseekers fail to comply with participation obligations while in receipt of an activity tested income support payment.⁴

Conduct of inquiry

1.4 Details of the inquiry were made available on the committee's website.⁵ The committee also contacted 38 organisations inviting submissions to the inquiry by 18 July 2014. Submissions were received from nine individuals and organisations, as detailed in Appendix 1.

1.5 A public hearing was held in Canberra on 18 August 2014. The witness list for the hearing is available in Appendix 2.

Background

1.6 To give effect to measures announced in the 2008–09 Budget, the former government introduced a package of reforms to employment services and a new

1 *Journals of the Senate*, No. 31 – 17 June 2014, p. 888.

2 Explanatory Memorandum (EM), p. 5.

3 The Hon. Luke Hartsukyer MP, Deputy Leader of the House and Assistant Minister for Employment, *House of Representatives Hansard*, 4 June 2014, p. 3.

4 The Hon. Luke Hartsukyer MP, Deputy Leader of the House and Assistant Minister for Employment, *House of Representatives Hansard*, 4 June 2014, p. 4.

5 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs (accessed 26 August 2014).

jobseeker compliance system⁶ that attempted to introduce measures to provide capacity for individual circumstances of jobseekers to be taken into consideration and to find better ways to ensure jobseeker compliance with participant obligations.⁷

1.7 At this time, the eight week penalty for wilful and persistent non-compliance was maintained. However, a number of provisions were introduced to provide flexibility in the application of the penalty. As such, currently:

- where a jobseeker commits a 'serious failure' participant payments will not be payable for eight weeks.⁸ Serious failures are persistent non-compliance with participation obligations⁹ and failure to accept, without reasonable excuse, an offer of suitable employment.¹⁰ Participant payments are Newstart allowance and, in some instances, youth allowance, parent payments and special benefits;¹¹ and
- the Department of Social Security Secretary (Secretary) may waive the above mentioned eight week non-payment penalty where a jobseeker begins to comply with a 'serious failure requirement' or, does not have the capacity to undertake a 'serious failure requirement' and would be in 'severe financial hardship' if the non-payment period was not ended.¹² Serious failure requirements include Work for the Dole and job search training.¹³ A person is in severe financial hardship if the value of their liquid assets is less than \$5 000 for a member of a couple and/or a person who has a dependent child, or less than \$2 500 for a single person with no children.¹⁴

Key provisions of the Bill

1.8 The Bill seeks to amend the Social Security (Administration) Act 1999 (Act) to introduce a stronger compliance framework for jobseekers in receipt of a 'participant payment'.¹⁵

6 Senate Education, Employment and Workplace Relations Committee, Social Security Legislation Amendment (Employment Services Reform) Bill 2008 [Provisions] Report, p.4.

7 Senate Education, Employment and Workplace Relations Committee, Social Security Legislation Amendment (Employment Services Reform) Bill 2008 [Provisions] Report, pp. 5-6.

8 EM, p. 10.

9 *Social Security (Administration) Act 1999*, s. 42M.

10 *Social Security (Administration) Act 1999*, s. 42N.

11 *Social Security (Administration) Act 1999*, s. 3, Schedule 1.

12 Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014, Schedule 1, ss. 1-5; *Social Security (Administration) Act 1999*, s. 42Q(1).

13 EM, p.5.

14 *Social Securities Act 1991*, ss. 14A(7).

15 EM, p. 5.

1.9 Schedule 1 of the Bill would abolish the ability of the Secretary to waive a non-payment penalty for jobseekers who incur an eight week non-payment penalty for refusing suitable work.¹⁶

1.10 Schedule 1 of the Bill also provides that where a jobseeker incurs an eight week penalty for persistent non-compliance with participation obligations, the Secretary may only waive the eight week non-payment penalty once.¹⁷

Consideration of the Bill by other committees

1.11 The Bill has been considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) and the Parliamentary Joint Committee on Human Rights (Human Rights committee).

Scrutiny committee

1.12 The Scrutiny committee detailed its consideration of the Bill in Alert Digest 7/14, tabled in the Senate on 26 June 2014. The Scrutiny committee had no comment on the provisions of the Bill.¹⁸

Human Rights committee

1.13 The Human Rights committee examined the Bill in its Ninth Report, tabled in the Senate on 15 July 2014.¹⁹

1.14 The government's Statement of Compatibility with Human Rights considered that the Bill did not appear to give rise to human rights concerns, but did note that the Bill engages the right to work, the right to social security and the right to an adequate standard of living.²⁰

1.15 The Human Rights committee considers that the measures of the Bill that remove and limit the ability to waive the non-payment penalty for refusal of suitable work, or for persistent non-compliance may limit the right to social security, the right to an adequate standard of living, and the rights to equality and non-discrimination.²¹

1.16 The Human Rights committee expressed concerns that, notwithstanding the assurances in the explanatory memorandum, it remains 'unclear how limiting the availability of the waiver on the ground of a jobseeker's severe financial hardship, or because a jobseeker agrees to undertake more intensive activities, such as Work for

16 EM, p. 5.

17 EM, p. 2.

18 Senate Standing Committee for the Scrutiny of Bills. Alert Digest No. 8 of 2014, 9 July 2014, p. 49.

19 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, pp 66-70.

20 EM, pp. 10-15.

21 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, pp 66-70.

the Dole, would achieve the stated objective of the measures.²² The Human Rights committee considered the characterisation of the Bill in the explanatory memorandum as a promotion of the right to work by providing 'a stronger incentive to accept an offer of suitable work',²³ as an inaccurate assessment of the Bill's limitation on human rights.²⁴

1.17 The Human Rights committee suggested that the Bill also has potential to disproportionately or unintentionally impact negatively upon particular groups resulting in the engagement and limitation of the rights to equality and non-discrimination.²⁵

1.18 The Human Rights committee has sought clarification from the Assistant Minister for Employment as to whether the removal or limitation of the ability to have the non-penalty waived is compatible with the right to social security and the rights to equality and non-discrimination.²⁶

1.19 The Assistant Minister for Employment is yet to provide a response to the Human Rights committee's request for clarification, however, the Department of Education (department) indicated in their submission to this inquiry that a response is forthcoming.²⁷

Financial Impact Statement

1.20 The explanatory memorandum submits that the Bill would have a financial impact, resulting in net savings for the Social Services portfolio of \$9.3 million over three years and \$20.5 million over five years.²⁸

Acknowledgement

1.21 The committee thanks those individuals and organisations who made submissions and who gave evidence at the public hearing.

Notes on References

1.22 Reference to the committee Hansard is to the proof Hansard. Page numbers may vary between the proof Hansard and the official Hansard transcript.

22 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, p. 68.

23 EM, p. 11.

24 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, p. 69.

25 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, p. 70. For example, women are generally more likely to be welfare recipients and to have a range of caring responsibilities that intersect with the right to social security.

26 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, p. 70.

27 *Submission 9*, p. 5.

28 EM, p. 2.

Chapter 2

Key issues

2.1 The Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 (Bill) changes the waiver provisions for penalties where a jobseeker fails to accept an offer of suitable work or deliberately and repeatedly fails to comply with participation obligations.

2.2 Broadly speaking, submissions to the inquiry examined the Bill's potential financial impact on vulnerable jobseekers¹ and its ability to facilitate incentives for workforce reengagement.² Some submitters also emphasised the need for the Bill to be considered in the context of other government proposals³ and the deterrent effect of the penalty.⁴

2.3 While some concerns were raised about the proposed measures, others acknowledged the financial and social benefits of strengthening Australia's jobseeker compliance frameworks and highlighted the safeguards that exist to protect vulnerable jobseekers.

Financial impacts on vulnerable jobseekers

2.4 Some submitters questioned the ability of the proposed measures to respond to the individual circumstances of jobseekers.⁵ Specifically, concerns were raised about the potential financial impact of the Bill on the most disadvantaged jobseekers.⁶ For example, Brotherhood of St Laurence contended that the Bill created a high risk of unintended consequences, by impacting upon jobseekers who may find themselves in breach of their obligations due to circumstances beyond their control, such as mental illness, domestic violence or homelessness.⁷

1 See: St Vincent de Paul National Council, *Submission 1*, pp. 4–5; National Welfare Rights Network, *Submission 4*, pp. 6–7; Australian Council of Social Service, *Submission 5*, p. 1.

2 See: *Submission 1*; Anglicare Australia, *Submission 3*; *Submission 4*; BoysTown, *Submission 6*; Brotherhood of St Laurence, *Submission 7*.

3 See: *Submission 4*, pp. 7–8; *Submission 6*, p. 5.

4 See: *Submission 1*; *Submission 4*.

5 See: *Submission 6*; *Submission 7*.

6 See: *Submission 1*, pp. 4–5; *Submission 4*, pp. 6–7; Australian Council of Social Service, *Submission 5*, p. 1.

7 *Submission 7*.

2.5 The government has stated that under the proposed amendments:

Job seekers will not be forced to take on work that is clearly beyond their work capacity and that their individual circumstances, such as homelessness, will be taken into account.⁸

2.6 The Department of Employment (DE) acknowledged the importance of providing safeguards for vulnerable jobseekers and contended that vulnerable jobseekers would not be unduly affected by the measures in the Bill.⁹ DE noted that:

...the bill will not remove or weaken any of the current safeguards in the system that are designed to ensure that vulnerable jobseekers do not incur penalties inappropriately.¹⁰

2.7 The committee notes that there is currently a 'vulnerability indicator'¹¹ mechanism in place to identify vulnerable jobseekers and that this Bill will not remove, weaken or change this mechanism. The committee also notes that this mechanism has proven to be effective because jobseekers with a vulnerability indicator comprise only a small proportion of those jobseekers who incur penalties for non-compliance.

In 2012-13, job seekers with a Vulnerability Indicator on their record, represented 16 per cent of the total activity tested job seeker population. During the same financial year, they incurred 13 per cent (223) of all the penalties applied for refusing suitable employment and 16.7 per cent of all of the penalties applied for non-compliance (4,238).¹²

2.8 The Department of Human Services (DHS) is responsible for placing a vulnerability indicator on a jobseeker's record. In evidence before the committee, DE explained that there are:

... categories of vulnerability that go onto a job seeker's record, and they relate to things like illness or injury requiring treatment, psychiatric problems, drug and alcohol dependence, significant lack of literacy and numeracy.¹³

8 The Hon. Luke Hartsukyer MP, Deputy Leader of the House and Assistant Minister for Employment, *House of Representatives Hansard*, 4 June 2014, p. 4.

9 Department of Employment, *Submission 9*, p. 6.

10 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, pp. 38–39.

11 A Vulnerable Indicator will be placed on a jobseeker's record where the Secretary has made a determination that a person is experiencing financial exploitation or hardship, or homelessness or a risk of homelessness. See Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010; Explanatory Statement, Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010, p. 2.

12 *Submission 9*, p. 6.

13 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 46.

2.9 The committee notes that a vulnerability indicator may be recorded in the following circumstances:

- psychiatric problems or mental illness in the last six months
- cognitive or neurological impairment
- illness or injury requiring frequent treatment
- drug or alcohol dependency which may impede participation
- eight week non-payment period in the last twelve months
- homelessness
- recent traumatic relationship breakdown, especially if domestic violence is involved
- significant language and literacy issues
- recent prison release
- significant caring responsibilities
- a period of transition during which the job seeker's capacity to comply with their requirements may be affected. For example, had a child leave care and as a result their participation requirements have changed.¹⁴

2.10 DE advised that if a jobseeker's record contains a vulnerability indicator this acts an alert to the job service provider and DHS that this individual has a vulnerability that needs to be taken into account in making any assessments about that jobseeker, including whether they have refused a suitable job, or failed to comply with a participation obligation, or whether they have been persistently and wilfully non-compliant with their participant obligations.¹⁵

2.11 DE also confirmed that DHS takes into consideration the fact that a jobseeker has a vulnerability (for example, a mental health condition) at the time a decision regarding a penalty is made.¹⁶

2.12 DE explained that while the vulnerability indicator does not provide a jobseeker with a 'blanket exemption' from meeting their participation obligations, it:

... is something that we have to take into account when setting requirements and reviewing them. People who have a vulnerability indicator are also often what we call exempt from participation requirements. So that is where they are given an exemption because of their

14 Department of Employment, answer to question on notice, 18 August 2014 (received 20 August 2014).

15 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 46.

16 Ms Moya Drayton, Group Manager, Job Services Australia Group, and Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

personal circumstances for a period of time in having to meet their requirements. And in those cases there is no compliance activity that can take place in respect of them.¹⁷

2.13 With respect to the implementation of the Bill, St Vincent De Paul National Council and BoysTown emphasised the need for the proposed measures to take into account jobseekers experiencing severe financial hardship, particularly those supporting dependents.¹⁸ Similarly, the Financial Rights Legal Centre considered the potential affect the implementation of the proposed measures could have on a jobseeker's repayment arrangements. They highlighted that any break in income support must come as a last resort, because a breach of faith or obligation relevant to a repayment agreement would have serious consequences, such as repossession or lack of inclination to be flexible in the future.¹⁹ The DE advised that:

As the first waiver will remain available to all job seekers, only a relatively small percentage of all job seekers or vulnerable job seekers will be affected by the removal of second or subsequent waivers.²⁰

2.14 In the context of persistent and wilful non-compliance, DE emphasised that job service providers will retain the discretion they currently hold about whether or not they report issues of non-compliance to DHS to investigate.

.... discretion for reporting persistent and wilful noncompliance is not being taken away from providers. The Department of Human Services will investigate things that the employment service provider has decided to refer to them, using their discretion about the best way to engage a job seeker. So if they decide that it is not in the best interests of the job seeker to report their noncompliance to the Department of Human Services, they still have the discretion not to do that.²¹

2.15 The committee notes that the proposed legislation will have no impact on jobseekers who cannot find work despite their best efforts and whose failure to meet their participation requirements is beyond their control:

... it will not impact the 98 per cent of job seekers who do not incur these types of failures... Rather, the bill targets those who have received but nevertheless refused an offer of suitable work without a reasonable excuse or who have been found after an in-depth assessment by the Department of Human Services, to have been persistently and wilfully non-compliant.²²

17 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

18 *Submission 1*, p. 5; *Submission 6*.

19 Financial Rights Legal Centre, *Submission 2*.

20 *Submission 9*, p. 7.

21 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

22 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

Incentives and workforce reengagement

2.16 A number of submitters questioned the extent to which the measures in the Bill would provide an incentive for workforce reengagement for jobseekers in breach of their participation obligations.²³

2.17 National Welfare Rights Network (NWRN) and Anglicare Australia raised concerns about the Bill's objective and drew the committee's attention to the, then Department of Education, Employment and Workplace Relations (DEEWR)²⁴ submission to the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008, in which DEEWR relied upon a survey conducted regarding the consequences of the penalty system.²⁵

One finding of particular concern from the DEEWR survey was the impact of eight week penalties on the motivation and ability of job seekers to look for work. The survey found that 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.²⁶

2.18 As the Bill provides for a jobseeker to have the eight week penalty waived once through participation in an intensive activity, the government has stated that:

... it is consistent with the original intent of the waiver provisions, which was to encourage job seekers to re-engage with their employment service provider and resume their participation activities.²⁷

2.19 DE also provided evidence that 'increase[ing] engagement both in paid labour market and with employment service providers' for jobseekers who are struggling to meet their requirements and are persistently and wilfully non-compliant was one of the main considerations behind this Bill. In introducing measures that result in jobseekers who refuse work not being able to have their penalty waived and return immediately to payment, DE hopes to 'provide sufficient incentive for such job seekers to accept the work they are offered.'²⁸

2.20 In addition, DE emphasised that job service providers have discretion to determine the best way to engage a jobseeker, such that:

23 See: *Submission 1; Submission 3; Submission 4; Submission 6; Submission 7.*

24 On 18 September 2013 the Department of Education and the Department of Employment was created out of the former Department of Education, Employment and Workplace Relations.

25 *Submission 4*, p. 2; *Submission 3*, p. 4.

26 *Submission 4*, p. 9.

27 The Hon. Luke Hartsukyer MP, Deputy Leader of the House and Assistant Minister for Employment, *House of Representatives Hansard*, 4 June 2014, p. 4.

28 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

It could be that they decide that they will not submit what we call a participation failure through to the Department of Human Services. So the provider still retains discretion about whether or not that is the best way to engage somebody.²⁹

Interaction with other government proposals

2.21 Some submitters highlighted the need for careful consideration of how the Bill will interact with other amendments proposed by the government.³⁰ Specifically, concerns were raised with reference to how the proposed changes to Newstart will interplay with this Bill.³¹

2.22 NWRN provided evidence that was consistent with other submissions received by the committee when it highlighted:

... that this bill needs to be seen in its interaction with a number of other proposals or changes to the social security system; not least of all would be the six-month waiting period for unemployment benefits for job seekers under 30 and the regulation that is before the parliament at the moment with regard to penalties.³²

2.23 Further, Anglicare submitted that 'we all are waiting to see how [this Bill] ... is going to interact' with other government proposals.³³ St Vincent De Paul National Council and Brotherhood of St Laurence concurred with this view.³⁴

2.24 In evidence before the committee DE acknowledged the difficulties associated with the implementation of the different measures of jobseeker compliance-related legislation.³⁵ However, DE emphasised their commitment to communicate with stakeholders to explain the timetable for the introduction of Bills as well as the

29 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

30 *Submission 4*, pp. 7–8; *Submission 6*, p. 5.

31 *Submission 4*, pp. 7–8; *Submission 6*, p. 5. Under the Newstart amendments a job seeker under the age of 30 will need to wait six months for income support. See Social Security Legislation Amendment (Increased Employment Participation) Bill 2014.

32 Ms Maree O'Halloran AM, President, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p. 9.

33 Mr Roland Manderson, Acting Executive Director, Anglicare Australia, *Committee Hansard*, 18 August 2014, p. 22.

34 See: Dr John Falzon, Chief Executive Officer, St Vincent De Paul Society National Council, *Committee Hansard*, 18 August 2014, pp. 15–23; Professor Shelley Mallett, General Manager, Research and Policy Centre and Ms Eve Bodsworth, Research Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 18 August 2014, pp. 15–23.

35 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 42.

interaction of the proposals.³⁶ With specific reference to 'the under-30s measure' DE explained that this Bill 'is not impacted by those changes.'³⁷

The deterrent effect of the penalty

2.25 NWRN argued that no convincing evidence exists to support the changes to the system with respect to mandatory penalties and the ability of the one-time waiver to be more effective as a deterrent, than the current system.³⁸

2.26 In contrast, DE submitted that the current 'waiveable' eight week non-payment penalty does not act as a sufficient deterrent to persistent non-compliance.³⁹ In support of this claim, DE presented the following data:

In 2008-09, the year before waivers were introduced, there were 8,850 serious failures applied for persistent non-compliance, compared to 25,286 in 2012-13 of which 73 per cent were waived... with little change in the caseload or the level of participation requirements between these two periods, the most probable explanation for the increase in penalty numbers is that they do not provide a sufficient deterrent to persistent non-compliance.⁴⁰

2.27 Further, with respect to penalties applied for refusing work, the DE provided evidence that:

In 2008-09, the year before the introduction of waivers, 644 penalties were applied for refusing work. In 2012-13, 1,718 penalties were applied for refusing work and 1,227 of these were waived. This means that on 1,227 occasions job seekers who had been offered a job refused that job and returned immediately to income support payment. For this reason, it is intended that job seekers who refuse work should not be able to have their penalty waived and return immediately to payment. We hope that this will provide sufficient incentive for job seekers to accept work when they are offered it.⁴¹

2.28 In evidence before the committee DE explained that their 'data indicates that the waiver provisions have weakened the deterrent effect of eight week penalties.'⁴² Specifically, they submitted that '[t]he data shows a trebling of these types of waivers'

36 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 42.

37 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 41.

38 *Submission 4*, p. 3.

39 *Submission 9*, p. 6.

40 *Submission 9*, p. 6.

41 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

42 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

and argued that 'there is no other policy or environmental factor that can explain this trebling.'⁴³

Administration of the Bill

2.29 The National Employment Service Association emphasised the importance of ensuring jobseekers are provided notice and education about the potential consequences of failing to comply with the framework.⁴⁴ The DE explained that:

Job seekers will be informed in person of the new rules enacted by this Bill at routine contacts with employment services providers and with the Department of Human Services to ensure they understand the consequences of refusing suitable work and persistent non-compliance.⁴⁵

2.30 Further, DE provided evidence that the Bill makes no changes with respect to decision making and reporting requirements.⁴⁶ DE emphasised that the decision making power regarding the imposition of an eight week penalty remains with DHS and not the job services provider.⁴⁷ Specifically, DE stated that:

[P]roviders are not going to be making decisions about someone not getting paid for eight weeks—that still rests with the Department of Human Services. They will not be expected to provide any additional documentation. They will still be able to use their discretion about whether or not they report the persistent and willful non-compliance instances to the Department of Human Services, who are the decision maker in this case.⁴⁸

2.31 With reference to penalties for persistent and wilful non-compliance, DE explained that in the vast majority of cases such penalties are not automatically triggered, and as such, the job service provider does not need to indicate to Centrelink that they think a particular jobseeker is persistently and wilfully non-compliant.⁴⁹

The way the system works is that if the job seeker on at least three previous occasions has had a penalty applied by the Department of Human Services and on each of those occasions the Department of Human Services considers whether that particular job seeker have a reasonable excuse for not being able to do that particular requirement. If there are three failures of a particular type that have been applied in a six-month period then the

43 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 38.

44 National Employment Services Association, *Submission 8*, p. 4.

45 *Submission 9*, p. 9.

46 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 41.

47 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

48 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

49 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

comprehensive compliance assessment is automatically triggered. It happens and the provider is not involved in that triggering process at all.⁵⁰

Refusal of a job

2.32 The committee notes that before applying a penalty to a jobseeker for refusing work DHS must be satisfied that: the job was suitable for the jobseeker; and the jobseeker did not have a reasonable excuse for their failure.⁵¹

... there is a two-test process that goes on. If the Department of Human Services finds that it is not reasonable to expect the person, because of their circumstances, to undertake that job, or that the job is not suitable... it will not apply the penalty. So, if either of those conditions exist, no penalty is applied.⁵²

Suitable work

2.33 If a jobseeker refuses a job that is unsuitable for the jobseeker the penalty will not be applied. For the purposes of this Bill, DHS may consider a job to be unsuitable for a jobseeker if it:

requires particular skills, experience or qualifications that the person does not have, and appropriate training will not be provided by the employer,

may aggravate a pre-existing illness, disability (1.1.D.160) or injury and medical evidence has been provided,

involves health or safety risks and would contravene an occupational health and safety law,

the job seeker is a principal carer of a child or children under SSAct section 5(1) and appropriate care and supervision of the child/ren is not available during the hours the person would be required to work,

the terms and conditions for the work are less generous than the applicable statutory conditions,

involves commuting from home to work that would be unreasonably difficult,

involves enlistment in the Defence Force or the Reserve Forces,

requires the person to change residence, or

in the Secretary's opinion, is unsuitable for any other reason.⁵³

2.34 In clarifying the above considerations, DE provided evidence that:

50 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

51 Australian Government, Department of Social Security, 3.1.13.40 Serious Failures & Penalties, <http://guides.dss.gov.au/guide-social-security-law/3/2/8/60> (accessed 19 August 2014).

52 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

53 Australian Government, Department of Social Security, 3.1.13.40 Serious Failures & Penalties, <http://guides.dss.gov.au/guide-social-security-law/3/2/8/60> (accessed 19 August 2014).

... [a job] would not be considered reasonable if the job would exacerbate a known medical condition that the person has. It would not be considered reasonable for the person to undertake the job if there were things happening in their private life that made them vulnerable, such as ongoing mental health conditions or other circumstances.⁵⁴

2.35 The assessment of whether a job is suitable for a jobseeker 'is undertaken by a [DHS] social worker or a senior customer service officer who is trained and skilled in making those assessments.'⁵⁵ This investigation is undertaken by DHS prior to the imposition of the failure and penalty, and typically involves 'conversations between the job seeker, the potential employer and the employment service.'⁵⁶

Reasonable excuse

2.36 If a jobseeker has a reasonable excuse for committing any failure with respect to compliance obligations for a participation payment the penalty will not be applied.

2.37 On 27 June 2014 the Secretary of the Department of Social Security (Secretary) made a new legislative instrument, effective 1 July 2014⁵⁷ that tightens the matters that DHS must take into account in deciding whether a jobseeker has a reasonable excuse.⁵⁸

2.38 The legislative instrument 'does not limit the matters that the Secretary can take into account in determining whether a person has a reasonable excuse,'⁵⁹ but is intended 'to make it much clearer to job seekers... so that they understand when they would have a reasonable excuse and when they would not'⁶⁰ and to 'provide some guidance to [the] decision maker.'⁶¹

[I]t is intended to encourage the decision maker to find that a job seeker had a reasonable excuse for failing to comply with a participation requirement typically only in exceptional circumstances that were beyond the job seeker's control.⁶²

54 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

55 Ms Sheryl Lewin, Acting Deputy Secretary, Social Services, Department of Human Services, *Committee Hansard*, 18 August 2014, p. 46.

56 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 46.

57 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1).

58 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1); Explanatory Statement, Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1), p. 1.

59 Explanatory Statement, p. 1.

60 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 48.

61 *Submission 9*, p. 4.

62 *Submission 9*, p. 4.

2.39 The legislative instrument provides that the following matters be taken into account in determining if a person had a reasonable excuse for failing to meet a participation requirement:

whether the person was unable for reasons beyond the person's control to comply with the requirement that resulted in the failure;

whether there were exceptional and unforeseeable circumstances beyond the person's control such that no reasonable person would expect the person to comply with the requirement that resulted in the failure; and

if the failure is a failure to which section 42UA applies and the person failed to give the notification referred to in that section, whether:

the person was unable for reasons beyond the person's control to give such notification; or

there were extreme and unforeseeable circumstances beyond the person's control such that no reasonable person would expect the person to give such notification.⁶³

2.40 The legislative instrument also provides that a jobseeker will have a reasonable excuse if the jobseeker's failure to meet a participation obligation was a result of the person:

being incapacitated due to illness, injury or disability;

undertaking paid work;

attending a job interview; or

having unforeseeable and unavoidable caring responsibilities.⁶⁴

2.41 DE emphasised that the legislative instrument in no way limits the factors that DHS can take into account in determining whether a jobseeker had a reasonable excuse for failing to meet a participation obligation:

[I]t provides some guidance around the expectation that it be an exceptional and unforeseeable circumstance... It also refers to a requirement that job seekers have, in respect of some activities, that they notify their provider if they are unable to attend an activity or an appointment. So there are two parts to the reasonable excuse determination. It is really about making it quite clear that it has to be something beyond the person's control, and an exceptional circumstance, as opposed to something that the person would have known about and would have been able to let their provider know about beforehand.⁶⁵

63 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1). s. 6(3).

64 Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No. 1). s. 6(4).

65 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 48.

2.42 To provide context to the provisions contained in the legislative instrument DE provided the following examples of where a penalty would not be applied because a jobseeker would have a reasonable excuse for failing to meet their participation obligation.

It would not be considered reasonable if the job would exacerbate a known medical condition that the person has. It would not be considered reasonable for the person to undertake the job if there were things happening in their private life that made them vulnerable, such as ongoing mental health conditions or other circumstances.⁶⁶

Persistent and wilful non-compliance with participant obligations

2.43 The committee notes that before applying a penalty for persistent and wilful non-compliance with participant obligations, DHS must undertake a comprehensive compliance assessment (CCA).⁶⁷ A CCA will take place after a jobseeker has been deemed non-compliant with their participant obligations and had a penalty imposed by DHS in three separate instances over six months.⁶⁸

2.44 NWRN submitted that 'comprehensive compliance assessments are the most critical safeguard within the system for assessing whether or not a person should have an eight-week penalty for persistent noncompliance' and argued that Centrelink should not be undertaking the CCA in respect of imposing a penalty under this Bill.⁶⁹

2.45 In response to these concerns, DE clarified that a senior specialist at DHS would undertake a CCA before imposing a penalty for persistent and wilful non-compliance.⁷⁰ DE described the CCA as:

... an additional assessment that looks to see whether or not the job seeker had any barriers that had not been disclosed, that were impacting on their capacity to comply. It also looks at whether or not the person had a pattern of things that was going on in their lives.⁷¹

2.46 DE explained that as part of the CCA a senior specialist at DHS will consider whether the persistent non-compliance 'was within [the job seeker's] control and there

66 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 39.

67 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

68 Ms Moya Drayton, Group Manager, Job Services Australia Group, and Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

69 Ms Amy Meers, Executive Officer, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p. 14.

70 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

71 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

were no other barriers that were identified.⁷² DE emphasised that the CCA was a '[h]olistic conversation and assessment with the job seeker as to whether that individual was persistently and wilfully non-compliant.'⁷³

[I]t is not looking at reasonable excuses across those earlier failures or whether there is a reasonable excuse now; it is looking holistically across those six months. It asks: is this individual showing that they are consciously and deliberately seeking to avoid meeting their participation requirements?⁷⁴

2.47 DE also provided the following data, evidencing that approximately two thirds of CCAs do not result in the imposition of a penalty.

Based on 2012-13 data, it is around 34 per cent, just under 35 per cent, of those CCAs that do result in the finding of persistent and wilful non-compliance. The vast majority—just a little over 65 per cent—do not result in the imposition of an eight-week non-payment penalty.⁷⁵

Tier review process

2.48 The committee notes that if a jobseeker disputes a decision that is made by a job service provider, that jobseeker can request a review of the decision. The review would be conducted by a DHS authorised review officer.⁷⁶

2.49 If a jobseeker disputes a decision that is made by DHS, that jobseeker can request a review of the decision. At this stage of review, the jobseeker has access to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal.⁷⁷

2.50 DE confirmed that, should a jobseeker request a review at any level, that jobseeker will continue to receive their participation payment until the end of the appeal process.⁷⁸

Committee view

2.51 The committee notes the concerns raised by witnesses and submitters. However, the committee also notes that the Bill will only impact the small proportion

72 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

73 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

74 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 45.

75 Mr Derek Stiller, Branch Manager, Job Seeker Participation Branch, Department of Employment, *Committee Hansard*, 18 August 2014, p. 44.

76 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

77 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 47.

78 Ms Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18 August 2014, p. 43.

of jobseekers who have received but nevertheless refused an offer of suitable employment without a reasonable excuse or who have persistently and wilfully failed to comply with their participation obligations.

2.52 The committee considers that it is important to limit the number of eight week penalty waivers a jobseeker can access, so that the penalty will be an effective deterrent to non-compliance. The committee is also satisfied appropriate safeguards exist such that no penalty will be applied for a failure that was directly attributable to a jobseeker's vulnerability.

2.53 The committee is persuaded that, on balance, the legislative response is proportional and reasonable, such that the proposed amendments respond to community expectations and would result in more jobseekers meeting their mutual obligation requirements and moving from welfare to work.

Recommendation 1

2.54 The committee recommends that the Bill be passed.

Senator Zed Seselja

Chair

Labor Senators' Dissenting Report

1.1 Labor Senators are deeply concerned by changes the Government is seeking to make to income support payments for jobseekers, including those proposed under the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 (Bill).

1.2 Labor Senators support a just and reasonable jobseeker compliance system which encourages and supports participation for those in receipt of participation payments.

1.3 The evidence provided to the Committee makes it clear that the current compliance provisions for jobseekers receiving participation payments are flexible and effective.¹

1.4 Submitters to the inquiry raised real concerns about the potential financial impact of the changes in the Bill on vulnerable jobseekers,² and questioned the removal of an incentive for reengagement for jobseekers in breach of their participation obligations.³

1.5 Accordingly, Labor Senators oppose the passage of this Bill in its entirety.

The Existing Provisions are Effective

1.6 The existing legislative framework is a result of changes made under the former Labor Government.

1.7 In 2008, the then Minister for Employment Participation, Brendan O'Connor, after extensive consultation, preserved the punitive 8 week non-payment period for breaches of a jobseeker's mutual obligations introduced by the Howard Government. However, Labor introduced the ability to reengage with participation requirements to have withheld income support reinstated.

1.8 Many stakeholders had been critical of the Howard Government's 'penalise first' approach to compliance as it had significant detrimental impacts on vulnerable jobseekers and was counter-productive as it penalised jobseekers and disengaged them from employment services during the penalty period.

1.9 To highlight the impact of the previous provisions, the National Welfare Rights Network referenced the survey on the impacts of the penalty system on jobseekers conducted by the Department of Education, Employment and Workplace

¹ See: National Welfare Rights Network, *Submission 4*, pp. 10-11; David Thompson, Jobs Australia, *Committee Hansard*, 18 August 2014, p. 8.

² See: St Vincent de Paul, *Submission 1*, pp. 4-5; *Submission 4*, pp.6-7; Australian Council of Social Services, *Submission 5*, p.1.

³ See: *Submission 1*; Anglicare Australia, *Submission 3*; *Submission 4*; BoysTown, *Submission 6*; Brotherhood of St Lawrence, *Submission 7*.

Relations and referred to in the Department's submission to the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Social Security Legislation Amendment (Employment Services Reform) Bill 2008. The National Welfare Rights Network noted the survey showed that:

fifteen percent of those with an eight week non-payment penalty were found to have lost their accommodation. Fifty percent of job seekers, approximately 16,000 people, who had an eight week penalty had trouble keeping up with rent and were put at risk of homelessness.⁴

1.10 Labor's changes produced a system which preserved a punitive non-payment period whilst ensuring necessary protections for the most vulnerable jobseekers.

1.11 Evidence provided to the Committee supported the current balance. Jobs Australia stated that they:

...do not think further and more punitive compliance measures are necessary for the following reasons:

- the number of eight-week penalties currently being imposed is extremely low, which means that job seekers are complying; very few people incur second and subsequent penalties;
- the existing measures whereby waivers enable and encourage and incentivise people to re-engage immediately are likely to be much more effective in terms of getting them engaged in the system and getting to work; and
- there is an existing punitive element in the system, in that people are required to work off the penalty in cases where it is waived.

For all those reasons we do not believe it is necessary to up the ante on the penalties.⁵

1.12 In supporting the current measures the National Welfare Rights Network said:

Fundamentally, the system that we have now is very effective in ensuring that people re-engage immediately and in stopping people from falling through the cracks... The system as it is at the moment is actually working extremely well – certainly from our perspective and our on-the-ground casework.⁶

The Number of Non-Compliant Jobseekers is Very Small

1.13 Non-compliance numbers, particularly for refusal of a suitable job offer, are extremely low. Department of Employment data shows that for the period 1 July 2012 to 30 June 2013 there were only 27,004 serious failures, of which 25,286 were

⁴ *Submission 4*, p. 8.

⁵ David Thompson, Chief Executive Officer, Jobs Australia, *Committee Hansard*, 19 August 2014, p 1.

⁶ Amelia Meers, Executive Officer, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p. 11.

for persistent non-compliance and only 1,718 were for failing to accept or commence a suitable job.⁷

1.14 The Department of Employment stated that the number of penalties that have been applied for refusing work has nearly trebled since the change in the penalty regime - from 644 penalties in 2008-09 to 1,718 in 2012-13.⁸

1.15 In providing this data the Department of Employment did not provide any further information on other possible factors which may have contributed to this increase.

1.16 The National Welfare Rights Network argued that this increase should be considered in a broader context, indicating that a range of factors during the period specified would have contributed to the increase. The factors identified included the increase in the number of people who were receiving income support due to the Global Financial Crisis, additional strain due to the tightened job market and the drop in the number of people appealing decisions relating to refusal of suitable work, as it was quicker and easier to reengage and do a compliance activity.⁹

Changes would Discourage Jobseekers from Reengaging

1.17 Submitters contended that the current waiver provisions are important as they encourage jobseekers to reengage in the process after non-compliance by allowing the non-payment period to be ended if the jobseeker reengages with their participation obligations.¹⁰

1.18 Labor Senators are concerned that the proposed changes will discourage reengagement altogether, as even in circumstance where a jobseeker is willing and able to reengage during the non-payment process, the Government wants to prohibit them from doing so.

1.19 The Department of Employment have confirmed that jobseekers will be unable to actively reengage with participation activities during the 8 week non-payment period and their participation obligations will cease during that period.

1.20 This change seems at odds with the Governments stated commitment to helping jobseekers move from welfare to work and increasing workforce participation.

1.21 A number of submissions expressed the view that the measures in the Bill would not provide any incentive for jobseekers in breach of their participation obligations to reengage.¹¹

1.22 The Brotherhood of St Lawrence stated:

⁷ Department of Employment, *Submission 9*, p. 6.

⁸ *Submission 9*, p. 6.

⁹ Maree O'Halloran AM, President, and Amelia Meers, Executive Officer, National Welfare Rights Network, *Committee Hansard*, 18 August 2014, p 13.

¹⁰ See: *Submission 1; Submission 3; Submission 4; Submission 5; Submission 7*.

¹¹ See: *Submission 1; Submission 4; Submission 6; Submission 7*.

We believe that [the changes] will have harsh unintended consequences for job seekers, so we do not believe it will achieve the outcomes. We know that the evidence suggests that rapid re-engagement is absolutely crucial to achieving positive employment pathways. But what this will do is delay that re-engagement, and in such a moralising way that people could feel defeated by these sorts of measures, because it will have dire consequences for their housing stability and basic living standards.¹²

1.23 On this issue the National Welfare Rights Network submission states:

[I]t runs counter to the primary objective of the current system, which is to rapidly re-engage the jobseeker. People who incur an eight week penalty and who cannot “work it off” will have no incentive to re-engage with the system during that eight week period and little or no support during that period to find work.¹³

1.24 Jobs Australia supported allowing jobseekers to reengage after breaches, stating that the current legislative framework allows, and actually encourages, reengagement:

..for the vast majority of [jobseekers] to get a waiver they have to do something, and that means re-engaging. That means we can do things with them to get them complying, get them job searching and get them successfully into work. If we are not having anything to do with them for eight weeks, and if they do not have any money for eight weeks, we are just pushing them away.¹⁴

Concerns Regarding the Impact on Vulnerable People

1.25 Submitters raised significant concerns about the impact of the proposed changes on vulnerable and disadvantaged jobseekers.¹⁵

1.26 Labor Senators formed the view that jobseekers with a Centrelink recorded ‘vulnerability indicator’, meaning that they are disadvantaged in some way, including where they have mental illness or psychiatric problems, are homeless, have recently been discharged from prison, have had a recent traumatic relationship breakdown or suffer from cognitive or neurological impairment, could be further disadvantaged by the changes in the Bill.

1.27 Data from the Department of Employment shows that of all 27,004 serious failures recorded against jobseekers from 1 July 2012 to 30 June 2013, more than half (14,235) had a vulnerability indicator, a mental health indicator or were indigenous

¹² Professor Shelley Mallett, General Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 18 August 2014, p. 19.

¹³ *Submission 4*, p. 4.

¹⁴ David Thompson, Chief Executive Officer, Jobs Australia, *Committee Hansard*, 18 August 2014, p. 3.

¹⁵ *Submission 1; Submission 4; Submission 5*.

and a large proportion were under the age of 30.¹⁶ The proposed changes are likely to further disadvantage these groups of people.

1.28 National Welfare Rights Network also highlighted that Indigenous jobseekers are also overrepresented amongst those who will be penalised:

For a range of reasons already under the penalty system, Indigenous job seekers have higher numbers of penalties. It is not because they are not seeking work or do not want to comply but because there might be issues of remoteness or lack of understanding of the actual system – a whole range of issues – that result in that. Knowing that that is the case under the current regime, one would have to expect that this will impact disproportionately and negatively on Indigenous job seekers.¹⁷

1.29 Jobs Australia also stated:

[Indigenous jobseekers] are overrepresented and again, in some but not all cases, are more prone to some of the other vulnerabilities – mental illness and so on – that we have been talking about...the age profile of the Indigenous population is the exact opposite of the rest of the population, in that there are a very large number of young people. In the event that the government's proposal about a six-month waiting period for under-30s actually takes effect, it would have a very interesting and potentially very deleterious impact on communities where the great majority of population are young Indigenous people.¹⁸

1.30 Submitters also raised concerns that the proposed changes would actually exacerbate existing vulnerabilities and create further barriers to employment.

1.31 The Australian Council of Social Services stated:

The majority of recipients of unemployment payments have few savings, little access to credit, and many receive little or no support from family. A period of eight weeks without income support is very likely to cause hardship in these circumstances, including homelessness in some cases.¹⁹

1.32 Whilst the Department of Employment outlined safeguards within the current compliance system which protect vulnerable jobseekers, other submitters stated that the changes in the Bill would remove the final safeguard and could potentially expose vulnerable jobseekers to further disadvantage and hardship.

1.33 ACOSS submitted that:

The Bill would, if passed, retain the basic structure of the present compliance regime including the more timely and modest penalties for

¹⁶ *Submission 9*, p. 6.

¹⁷ Maree O'Halloran AM, President, National Welfare Rights Network, Committee Hansard, 18 August 2014, p. 10.

¹⁸ David Thompson, Chief Executive Officer, Jobs Australia, Committee Hansard, 18 August 2014, p. 4.

¹⁹ *Submission 5*, p. 1.

failure to attend meetings and courses and the Comprehensive Compliance Assessments for those at risk of an eight week penalty. However, the ‘last line of defence’ against imposition of this penalty would be removed, at least for those who have already had an eight week penalty waived while on income support and people who leave a job without an acceptable reason. The result would be an increase in eight week penalties and financial hardship.²⁰

Interaction with Other Proposed Changes to Participation Payments

1.34 Submitters also raised concerns about the interaction between the proposed changes under the Bill and other Government proposals including changes to unemployment benefits for jobseekers under 30 which will see them off income support for an ongoing 6 monthly cycle, and the compounding impact they would have on vulnerable jobseekers.²¹

1.35 In relation to the interaction with the proposed six-month withdrawal of payment for jobseekers under 30, the Brotherhood of St Lawrence said:

We feel greatly pained by that proposal, particularly if you add the eight-week waiver to it. I guess we start with the premise that these young people are our country's future, that they are going to make a significant investment in the economy as well as in the society as a whole and that we risk losing their contribution to the community, with both economic and social consequences as well as, of course, dire individual consequences for them. So we think that is of great concern.²²

1.36 The changes in the Bill also need to be considered in light of the Social Security (Reasonable Excuse — Participation Payment Obligations) (Employment) Determination 2014, a new disallowable instrument which the Government have tabled in the Senate. This determination seeks to further restrict “reasonable excuse” rules for jobseekers who fail to comply with their obligations.

1.37 The National Welfare Rights Network submitted that:

This “tightening” will severely restrict the discretion not to apply certain penalties based on reasonable excuse. It will likely see a significant increase in the number of penalties being imposed in situations where a person was not being wilfully non-compliant and may have had a reasonable excuse, but for some reason didn’t provide prior notice (eg flat phone battery, insufficient credit, was confused about the appointment date, innocently forgot about the appointment). The impact of the penalty on such a person will be compounded by the measures in this Bill which would restrict the ability for such a person to re-engage and “work off” a penalty.²³

²⁰ *Submission 5*, p. 1.

²¹ *Submission 4*, p. 8.

²² Professor Shelley Mallett, General Manager, Research and Policy Centre, Brotherhood of St Lawrence, *Committee Hansard*, 18 August 2014, p. 22.

²³ See: *Submission 4*.

1.38 Labor Senators are also concerned that the impact and interactions between all the Government's changes to participation requirements, as well as proposed new funding contracts for employment service providers, have not been clearly explained to key stakeholder groups.

1.39 This is illustrated by the fact that under questioning none of the witnesses were able to state with confidence who the decision maker was or would be in the Government's new employment services contracts and many were unsure of how serious failure penalties would apply to those impacted by the Government's proposed changes to stop benefits for six months of every year for jobseekers aged under 30.

1.40 This is likely due to the Government's failure to undertake adequate consultation prior to the announcement of the Budget and the number of changes to participation payments being brought forward and considered separately.

Other Concerns

1.41 The Committee also heard evidence that the changes would compromise the effectiveness of the Jobs Services Australia providers.

1.42 Submitters raised concerns about security and occupational health and safety for job service provider's staff. BoysTown said:

Health and Safety considerations for JSA staff are likely to require increased focus as it is expected that clients presenting with anxiety/high levels of agitation will be more frequent.²⁴

1.43 Submitters also raised concerns about the impact the changes would have on the relationship between the jobseeker and the provider, particularly how the changes would impact on the provider's ability to encourage jobseekers to reengage and stay engaged.

1.44 BoysTown stated that:

One of the things we find most beneficial in working with young people is the relationship between our worker—say, our employment consultant—and the young person. With the changes being proposed, that case-management relationship, we believe, will be compromised. The capacity of that relationship to form, which is the best way to move to address barriers, to understand what the issues are, to have the young person talk frankly about what the issues are, I believe, will be compromised by a dual role of case manager and a person there to assist and the compliance part of the benefit system.²⁵

1.45 This could have negative impacts on the ability of jobseekers to engage and move from welfare into the workforce.

²⁴ *Submission 6*, p. 4.

²⁵ Mr John Perry, General Manager, Employment, Education and Training, BoysTown, *Committee Hansard*, 18 August 2014, p. 32.

Conclusion

1.46 The Government has not done any consultation or analysis on the likely increased impact of the changes on vulnerable jobseekers. Nor has it provided any evidence at all to say that the current system is not working (indeed experienced, on the ground providers say that it is) or that the changes will improve the system.

1.47 The National Welfare Rights Network state that:

we have a compliance system that has been tested over a number of years and has had a number of reviews of it, that there does not seem to be a compelling reason to introduce these changes and that the likely upshot of the changes is that more vulnerable people will get caught.²⁶

1.48 This view is supported by the Labor Senators, who recommend that the Bill be opposed as the changes proposed are too harsh and are likely to negatively impact on already vulnerable and disadvantaged jobseekers.

Recommendation 1

Labor Senators recommend that the Senate oppose the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014.

Senator Carol Brown

Senator Nova Peris OAM

Senator Claire Moore

²⁶ Maree O'Halloran AM, President, National Welfare Rights Network, Committee Hansard, 18 August 2014, p. 12.

Australian Greens' Dissenting Report

1.1 The Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 is one piece of the Government's cruel attacks on people who find themselves in need of income support. This legislation is harsh and will punish the most vulnerable people. A decision to take away all of someone's income is serious and can have catastrophic impacts on people's lives.

1.2 All witnesses to the hearing on the 18th August 2014, apart from the Department, were not only concerned about the devastating effect that this Bill would have on people's lives, but were also concerned that the Bill would be counterproductive to the aim of supporting jobseekers into work.

The main aim does not seem to be to get people into employment. I feel it can be counterproductive. It could prevent people from getting employment, because they will be sanctioned even if they try to re-engage in intensive activities.¹

1.3 This Bill discourages people from re-entering the system quickly which we know is vitally important for positive outcomes. The Bill is unnecessary, ineffective and punitive.

1.4 The Australian Greens are concerned with several assumptions and consequences of the Bill. The Bill assumes that everyone who wants a job can get one, that deterrence will result in positive outcomes for job seekers, and that there is a problem with radical increases in non-compliance that need to be solved.

1.5 We are also deeply concerned with the cumulative impact that this Bill will have together with a range of other proposed budget measures. We are also concerned with the Governments reliance on charities to respond and solve crises knowingly caused by their own policy and legislation.

More jobseekers than jobs

1.6 While the Government perpetuates the myth that people have to be forced into work witnesses stressed throughout the inquiry that people wanted to work. "As opposed to the set of assumptions that this legislation is predicated on, people do want to work and they love the opportunity to meaningfully participate economically and socially".² The truth of the matter is that jobseekers far outnumber the jobs available, "we have approximately 150,000 job vacancies for around 1.5 million unemployed and underemployed people in the labour market."³

¹ Dr Kemran Mestan, Private capacity, *Committee Hansard*, 18th August 2014, p. 27.

² Dr John Falzon, Chief Executive Officer, St Vincent de Paul Society National Council, *Committee Hansard*, 18th August 2014, p. 19.

³ Dr John Falzon, Chief Executive Officer, St Vincent de Paul Society National Council, *Committee Hansard*, 18th August 2014, p. 15.

My experience, as well as in the research evidence suggests, that people are highly motivated to build independent lives. They actually do not, for the most part, want to be reliant on income support; they want to build independent, sustainable lives.⁴

1.7 The problem we have is not a behavioural issue, but a structural one. We need solutions that are structural, not punitive measures that drive people into despair.

Achieving negative outcomes

1.8 These reforms will have negative impacts and are counterproductive to supporting job seekers into work. We have evidence that this approach does not and will not work.

Our network opposes the introduction of the Bill before you, fundamentally on the ground that we question the purpose of the Bill—whether it is actually to punish people or to help people into paid work. We would think that we would all be united in the view that helping a person who is unemployed into paid work should be the goal, and we do not believe that this Bill will achieve that goal—in fact, we think it will be counterproductive. That is based on our casework experience with the heavy penalty system introduced in 2006 and the many changes to that system since that time.⁵

1.9 If the aim is to get job seekers to comply with requirements and move into employment, it seems unwarranted to punish people once they have complied or intend to comply.

Worse than ineffectual, the policy is likely to be counterproductive because, once a person is sanctioned, they have no incentive to meet requirements, whereas in the current regime, where payments are recommenced upon compliance, there is a strong incentive for a sanctioned person to quickly meet requirements.⁶

Increase in numbers of non-compliance

1.10 One of the stated reasons for the Bill is that there has been a surge in non-compliance. While there has been a higher number of non-compliance in not accepting a job, this is due to a number of factors, which do not justify this harsh approach.

1.11 A very small percentage of jobseekers incur serious failures – approximately 2%⁷. In June quarter last year there were over 25,000 cases of non-compliance

⁴ Professor Shelley Mallett, General Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 18th August 2014, p. 21.

⁵ Ms Maree AM O'Halloran, President, National Welfare Rights Network, *Committee Hansard*, 18th August 2014, p. 9.

⁶ Dr Kemran Mestan, Private capacity, *Committee Hansard*, 18th August 2014, p. 27.

⁷ Moya Drayton, Group Manager, Job Services Australia Group, Department of Employment, *Committee Hansard*, 18th August 2014, p. 42.

reported with over 18,000 of these being waived. Of the 25,000, only 1718 were penalised for refusing a suitable job. This is a very small number.

Those small numbers—small relative to the total number of job seekers in the system in any given year—suggest that the system is providing deterrence. We believe the relatively low rate of eight-week penalties applied is a sign of success, not a sign of failure, and that the removal of protections against those eight-week penalties is unnecessary.⁸

1.12 While the numbers of non-compliance are still low, the increase is due to a number of factors including a dramatic increase in the numbers of people on Newstart, and a drop in the numbers of appeals, due to changes in the administration of penalties.

If you look at the number of appeals, the appeals also dropped. Our casework experience was that people were getting penalties but they stopped appealing because it was a much faster, better route for them to just re-engage and do a compliance activity.⁹

Greater burden for charities

1.13 An important safeguard in the current system is the waiver of a payment penalty, if withholding payment will trigger serious financial difficulty. The removal of this waiver will mean that people barely surviving could find themselves on no payments for eight weeks. This will result in charities carrying a greater burden, at a time when they are already stretched to capacity.

Other measures

1.14 This Bill needs to be considered as part of a number of other proposed changes to the social security system; not least of all is the six-month waiting period for unemployment benefits for job seekers under 30.

Conclusion

1.15 It is clear that the Government is more interested in its ideological agenda than it is in helping job seekers find work. “There are so many reasons why people find themselves on the pathway to despair instead of the pathway to employment.”¹⁰ This government is not interested in the barriers and experiences of people relying on income support, it rather seeks to punish and humiliate them at every opportunity in the hope that it can deter people with this cruel and unyielding policy.

1.16 The Greens are concerned with many of the proposed changes, including the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014. This Bill will not assist jobseekers into work, it will in fact make finding work harder for people. That is why the Greens will not be supporting the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014.

⁸ Peter Davidson, Senior Advisor, Australian Council of Social Service, *Committee Hansard*, 18th August 2014, p. 24

⁹ Ms Maree O’Halloran President, National Welfare Rights Network, *Committee Hansard*, 18th August 2014, p. 13

¹⁰ Dr John Falzon, Chief Executive Officer, St Vincent de Paul Society National Council, *Committee Hansard*, 18th August 2014, p. 18.

Recommendation 1

That the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014 not be passed.

Senator Rachel Siewert

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

- 1 St Vincent de Paul National Council
- 2 Financial Rights Legal Centre
- 3 Anglicare Australia (plus an attachment)
- 4 National Welfare Rights Network
- 5 Australian Council of Social Service
- 6 BoysTown
- 7 Brotherhood of St Laurence
- 8 National Employment Services Association
- 9 Department of Employment

Additional Information

- 1 Anglicare Australia State of the Family 2012 report: When There's Not Enough To Eat, Essays, Volume 1, October 2012, tabled by Anglicare Australia, at Canberra public hearing 18 August 2014
- 2 Anglicare Australia State of the Family 2012 report: When There's Not Enough To Eat, Research Report, Volume 2, October 2012, tabled by Anglicare Australia, at Canberra public hearing 18 August 2014
- 3 National Centre for Social and Economic Modelling report: Going Without: Financial Hardship in Australia, August 2012, tabled by Anglicare Australia, at Canberra public hearing 18 August 2014
- 4 Suitable work conditions information, tabled by Department of Employment, at Canberra public hearing 18 August 2014

Answers to Questions on Notice

- 1 Answers to Questions on Notice received from National Welfare Rights Network, 19 August 2014
- 2 Answers to Questions on Notice received from Department of Employment, 20 August 2014

APPENDIX 2

Public hearings

Monday, 18 August 2014

Parliament House, Canberra

Witnesses

Jobs Australia

THOMPSON, Mr David Francis, Chief Executive Officer

National Welfare Rights Network

O'HALLORAN, Ms Maree AM, President

MEERS, Ms Amelia, Executive Officer

St Vincent de Paul Society National Council

FALZON, Dr John, Chief Executive Officer

Anglicare Australia

MANDERSON, Mr Roland, Deputy Director

Brotherhood of St Laurence

MALLETT, Professor Shelley, General Manager, Research and Policy Centre

BODSWORTH, Dr Eve, Research and Policy Manager

Australian Council of Social Service

DAVIDSON, Mr Peter Andrew Geoffrey, Senior Advisor

MESTAN, Dr Kemran, Private capacity

BoysTown

DALGLEISH, Mr John, Strategy and Research Manager

PERRY, Mr John, General Manager, Employment, Education and Training

Department of Employment

DRAYTON, Ms Moya, Group Manager, Job Services Australia Group

STILLER, Mr Derek, Branch Manager, Job Services Australia, Job Seeker Participation Branch

SHARPLES, Mr Ian, Director, Compliance Policy

SPAUL, Mr William Geoffrey, Principal Government Lawyer

Department of Human Services

LEWIN, Ms Sheryl, Acting Deputy Secretary, Social Services

RYAN, Ms Melissa, Acting General Manager, Participation Division

Department of Social Services

RULE, Ms Erin, Director, Labour Market Payments Policy Branch