LABOR SENATORS' DISSENTING REPORT

Key issues

1.1 This Social Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015 seeks to amend the Social Security (Administration) Act 1999 to support measures announced in the 2015-16 Abbott Coalition Budget, which increase the immediate consequences for job seekers who do not meet their mutual obligation requirements.

1.2 With Labor's support, the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014, legislated the 'no show no pay' principle to provide a stronger incentive for job seekers to attend their appointments. Labor did so only on the basis that we were able to protect the right of job seekers to review decisions in which payments are suspended – a right that the Government sought to remove. Labor sought to protect the rights of job seekers to justify a reasonable excuse for breaches to their obligations and ensured that no job seeker would have their payments stopped without first being notified.

1.3 Labor also ensured that the Social Security (Reasonable Excuse – Participation Payment Obligations) (Employment) Determination 2014 (No 1) enacted by Labor whilst in Government remained the legislative instrument used to decide whether an excuse is reasonable. The Government sought to push the burden of this decision on to employment service providers.

1.4 Labor support aspects of the Bill, for example, when a job seeker fails to undertake adequate job search efforts, a job seeker's payment may not be payable until the job seeker demonstrates adequate job search efforts. Once adequate job search efforts have been demonstrated, the job seeker would receive full back pay. Currently, it can take at least fourteen weeks of ongoing inadequate job search before a job seeker’s participation payment is impacted in any way. Labor recognises that changes in this legislation would provide a more immediate link for job seekers between the non-compliant action and any penalty applied through an appropriate and fair process.

1.5 Notwithstanding, Labor senators do have specific concerns with the bill. While certain aspects as supported by the Labor senators of the Committee, who wish to ensure that job seekers' mutual obligations are met, we must support vulnerable job seekers, not create legislative hurdles that increase the difficulty of finding work.

The immediate imposition of penalties on jobseekers for failing to enter into an Employment Pathway Plan

1.6 Currently, while job seekers may incur a connection failure if they do not enter into an Employment Pathway Plan when first asked to do so, there is currently no financial penalty imposed for an initial failure to enter into an Employment Pathway Plan. A job seeker will however be required to attend a second appointment

to enter into an Employment Pathway Plan. If the job seeker then attends but again fails to enter into an Employment Pathway Plan they may receive a reconnection failure and their payment may be cancelled by the Department of Human Services (DHS) until they do enter into an Employment Pathway Plan. The Government is by measure of this legislation seeking to impose a penalty on job seekers immediately for a failure to enter into an Employment Pathway Plan.

1.7 Labor senators believe this goes directly against the aim to find jobseekers work, and fails to promote proper engagement with a job seeker, by failing to allow them to review and consider their obligations under an Employment Pathway Plan before immediately agreeing to one. This could unduly influence a job seeker to agree to an Employment Pathway Plan that they do not understand or fully agree with.

1.8 Whilst Labor senators accept the Chair's indication that job seekers who do not wish to accept a plan immediately will continue to be allowed 48 hours 'think time' before any payment suspensions or financial penalties are submitted, we do not agree that view that the 48 hours think time is a reasonable timeframe to allow a job seeker to reflect and seek assistance to determine the appropriateness of their Employment Pathway Plan to their personal needs.

Lack of clarity around the financial impacts of the legislation

1.9 At the hearing held by the Committee on 13 November 2015, the Department provided no evidence of how many job seekers are incurring a connection failure due to a failure to enter into a new or altered Employment Pathway Plan, without a reasonable excuse, and therefore are unable to accurately outline how many job seekers would be without payments. This speaks directly to the accuracy (or otherwise) of the projected savings outlined by the budget measure.

Use of the term 'inappropriate behaviour'

1.10 The Minister has asserted that some job seekers are treating service providers with contempt by not behaving appropriately at relevant appointments. Labor senators are yet to be provided with adequate evidence of such behaviour, or how widespread such behaviour is. This claim is supported by the Parliamentary Human Rights Committee, who reported on the predecessor to this bill, the Social Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015.

1.11 Further to this, there appears to be no legislative definition of 'inappropriate behaviour' and no guidance as to how it should be judged. The only test is that the Secretary is satisfied, that a job seeker acted in an inappropriate manner such that the purpose of the appointment was not achieved. There also appears to be no guidance as to who determines what the purpose of an appointment is. The Secretary would be making such judgements on the basis on third-hand and subjective evidence that has been provided by an employment service provider to Centrelink, therefore, it appears to be a strong capacity for vulnerable job seekers to be unfairly penalised based on subjective analysis.

1.12 National Welfare Rights provided an example in their submission outlining where such a decision could result in an inappropriate assessment:

> Jenny worked in a call centre for 15 years before being made redundant. She is the principal carer for her aging parents and has been struggling financially since she was laid off…. She has applied for dozens of jobs, but hasn't had any interviews. She is beginning to despair and finding it hard to get out of bed in the morning and is faltering in her job search and caring responsibilities. … When she is at her employment services appointment, her case manager queries why she hasn't done all her 20 job searches this fortnight and she loses her temper and tells the case manager she is an idiot before leaving abruptly. The employment services provider is unaware of Jenny's caring responsibilities or any undiagnosed mental illness, and Jenny lacks insight herself. Jenny incurs a penalty for 'inappropriate behaviour' which adds to her financial hardship and worsens her mental state.[1]

1.13 Inappropriate behaviour is not defined in the bill and the bases for assessment are not clear and likely to involve a high degree of judgement on the part of the decision maker without clear statutory guidance. Moreover, Labor senators express concerns that as with the predecessor to this bill, the initial judgements will be made by a person who is not bound by the APS code of conduct. Labor senators were not persuaded that appropriate safeguards in place to allay the concerns of most submitters regarding the application of the inappropriate behaviour provisions.

The effects on regional job seekers

1.14 In addition, some witnesses suggested the effects of the proposed amendments on job seekers in regional areas may be disproportionately harsh because of the lack of employment opportunities available in regional and remote Australia, compared to other areas. Specifically, the arbitrary rules determining the number of job searches required do not reflect the reality of life in many small towns where there are far fewer businesses than in metropolitan areas.

1.15 The Australian Unemployed Workers' Unions argued that with regards to job search penalties, 'unemployed workers will be disproportionately affected'[2], and went on to state:

> by increasing the penalties surrounding insufficient job searches I think that the government is making the system very inflexible, when flexibility is definitely needed—especially for unemployed workers in regional areas. You may be in a town where there are not even 20 businesses, so how are you going to apply to 20 businesses per month—which is what you are required to do currently under the mutual obligation guidelines—when there are not even 20 in your area?

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1 National Welfare Rights Network, *Submission 13*, p. 7.

2 Mr Owen Bennett, Australian Unemployed Workers Unions, *Proof Committee Hansard*, 13 November 2015, p.6.

> As it stands at the moment with employment service providers, you might get some lenient ones that would say, 'Oh well, it's unreasonable for me to force you to look for 20 jobs when there just aren't 20 jobs around.' Or you might get some other lenient one that would think, 'I'd prefer you to concentrate on realistic job opportunities.' But I think this bill would embolden employment service providers. And with regard to the management of a lot of employment service providers, they will push their consultants to really make an issue of Job Search and ensure that unemployed workers always look for 20 jobs per month—and if they do not, then Newstart will be cancelled. I think that is a very concerning development.[3]

1.16 Jobs Australia echoed this concern:

> we are worried about whether we are in a situation where people are receiving adequate training so that they can exercise discretion so that they do not do things like make people enter standard job plans; that they are exercising reasonable judgements about what is a reasonable job search activity—somebody who has been unemployed for five years and living in a regional area who has applied for 1,000 jobs where 20 per month may be way too many.[4]

1.17 Labor senators consider it unreasonable to suggest that people living in regional and remote locations with severely limited job opportunities should be penalised in such an arbitrary manner. Further, Labor senators are extremely concerned about the unnecessary additional hardship that is likely to be inflicted - via penalties such as the eight week non-payment period - on already vulnerable job seekers who will simply be unable to meet job search requirements because of their location.

Introduction of an eight week non-payment penalty period

1.18 When a job seeker refuses or fails to accept an offer of suitable employment, and has no reasonable excuse for the failure, a job seeker would no longer be able to seek to have the existing eight week penalty period ended by agreeing to undertake additional activities. The government believes that this change would only affect those job seekers who have shown they can obtain suitable employment but are simply choosing not to work. The Government has already sought to make these changes through the Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014, which Labor opposed, and continues to oppose.

1.19 Labor senators have seen no overwhelming evidence to suggest forcing job seekers to serve the eight week non-payment penalty period regardless of the reasons leading to the refusal of the work, beyond a reasonable excuse would yield positive

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3 Mr Owen Bennett, Australian Unemployed Workers Union, *Proof Committee Hansard*, 13 November 2015, p. 11.

4 Mr David Thompson, Jobs Australia, *Proof Committee Hansard*, 13 November 2015, p. 22.

outcomes. This claim is supported by the Parliamentary Joint Committee on Human Rights.[5] This change to the Act does not allow for the consideration that proposed work may not be suitable, that the longevity of the employment or its future prospects and opportunities may undermine genuine future job opportunities or that the type of work might prevent more suitable work in the future. Many submitters, including ACOSS, Australian Unemployed Workers' Union (AUWU), the St Vincent de Paul Society and the National Welfare Rights network expressed similar concern over the non-payment penalty period in their submissions.

1.20 The measures also appear unnecessary when consideration is given to the fact that of 18,125 'serious non-compliance' penalties applied in 2014/2015 financial year, only 699 were for refusing a suitable job offer.

1.21 The changes outlined this bill would also remove the ability of the provider to waive the penalty despite evidence that serving the penalty would cause financial hardship. Labor senators would therefore suggest that pushing a job seeker into financial hardship, leading to a host of consequences such as poverty and homelessness, would fail to meet the Turnbull Government's test of protecting vulnerable people. St Vincent De Paul, in their submission to the Committee, argue that 'there is no question that this will absolutely devastate people's ability to survive'.[6] Labor senators agree.

Recommendation 1

1.22 Labor senators of the Committee recommend that the bill be amended to address these concerns.

Senator Sue Lines

Deputy Chair

5 Parliamentary Joint Committee on Human Rights Human Rights Scrutiny Report, twenty-ninth report of the 44th Parliament, 13 October 2015, pp 25 – 30.

6 St Vincent De Paul, *Submission 11*, p. 4.