



## Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011

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# Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011

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**House:** House of Representatives

**Portfolio:** Education, Employment and Workplace Relations

**Commencement:** Sections 1–3 on Royal Assent; Schedule 1, on the later of the day after Royal Assent, or 1 July 2011.

**Links:** The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

## Purpose

The Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011 (the Bill) amends the *Social Security (Administration) Act 1999* (SSA Act) to enable the immediate suspension of the income support payment of a job seeker who fails to attend a scheduled appointment or activity until they attend a rescheduled appointment or resume the relevant activity.

Where a job seeker attends the rescheduled appointment or resumes the activity, their income support payment is reinstated and they are back-paid any income support that was withheld as a result of the suspension. If a job seeker does not attend the rescheduled appointment or resume the activity without a reasonable excuse, their income support payment will be suspended until they do so, and they will not be back-paid for this period.

The Bill also introduces the requirement that a job seeker notify their employment services provider or Centrelink in advance of their scheduled appointment or activity of any excuse for non-attendance, except under special circumstances.

## Background

### Job seeker compliance requirements—July 2006

Under the former, Coalition government and the job seeker compliance system which was effective from 1 July 2006, job seekers were allowed to accumulate two such 'participation' failures (now known as connection or reconnection failures) before incurring any penalties. On the third participation failure within a twelve month period, however, job seekers would automatically be

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subject to an eight week loss of payment. Further failures within a twelve month period resulted in an additional eight week loss of payment.

## Review of job seeker compliance arrangements

In May 2008, the then Minister for Employment Participation, Brendan O'Connor released a discussion paper entitled *The Future of Employment Services in Australia*<sup>1</sup> to canvas for opinions about the new employment services system that was to replace the existing Job Network.<sup>2</sup> That discussion paper sought input on a number of issues, including compliance arrangements.

A number of submissions to the employment services review from employment services providers and community groups were critical of the 'penalise first' approach to compliance that had been introduced in 2006.<sup>3</sup> As they saw it, this approach not only had significant detrimental impacts on the vulnerable job seekers who were penalised, but was also counter-productive. This was because those people who were penalised were disengaged from employment services during the penalty period and, without income support, could not afford to look for work. Further, because the job seeker was allowed to incur two participation failures before being penalised, the compliance arrangements provided little in the way of deterrence or opportunities for early intervention. Job seekers, these critics (including the Department of Education, Employment and Workplace Relations (DEEWR)) argued, were given too much of an opportunity to become disengaged before potentially being penalised with an eight week loss of payment.<sup>4</sup>

## Job seeker compliance requirements—2009

Under the *Social Security Act 1991*, all recipients of Newstart Allowance, Youth Allowance (other) (if the recipient is under 21 years of age and not in full time study), Parenting Payment (if the recipient has no children under six years of age) or Special Benefit (if the recipient holds a specified type of visa) must satisfy the Activity Test as a condition of their payment. This means that a person must be actively seeking and willing to undertake paid work that is suitable for that person, if they are to receive government-provided income support.

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1. Department of Education, Employment and Workplace Relations, *'The future of employment services in Australia'*, discussion paper, Commonwealth of Australia, Canberra, May 2008, viewed 11 May 2011, <http://www.workplace.gov.au/NR/rdonlyres/002400C9-E034-4C88-90D1-ABB7F3C590EF/0/DiscussionPaperWEB.pdf>
  2. B O'Connor (then, Minister for Employment Participation), *New employment services discussion paper released*, media release, 16 May 2008, viewed 10 May 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FAOHQ6%22>
  3. The text of all the submissions to the Employment Services Review can be viewed at: <http://www.workplace.gov.au/workplace/Publications/PolicyReviews/Employment+Services+Review/> (viewed 11 May 2011).
  4. These views are summarised in J Disney, A Buduls and P Grant, *Independent review of the Job Seeker Compliance Framework: a report to the Parliament of Australia*, Department of Education, Employment and Workplace Relations, 2010, pp. 16–17, viewed 9 May 2011, <http://www.deewr.gov.au/Employment/ComplianceReview/Documents/JSCReportReview.pdf>

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In most instances, job seekers are required to demonstrate that they are looking for work—for example, by submitting a fortnightly job search report that details contacts with prospective employers. Requirements such as these are typically included in a job seeker's Employment Pathway Plan (EPP), along with other activities that are deemed necessary to help them gain employment.<sup>5</sup>

Such activities could include attendance at various forms of assessment and assistance and at specified training, work experience and job interviews. While some of these activities may be optional, others will be compulsory. As a consequence, job seekers are for the most part required to comply not only with the Activity Test, but also with an EPP.<sup>6</sup>

Where a job seeker fails to comply with one or more of the particular, compulsory conditions outlined in their EPP, without a valid reason, they may be deemed by their employment services provider not to have satisfied the Activity Test. In such cases, the employment services provider may advise Centrelink (through a Participation Report) that a failure has occurred and Centrelink may, in turn, choose to impose a sanction on the job seeker. Alternatively, employment services providers may submit a Contact Request that asks Centrelink to contact the job seeker to arrange another appointment. Sanctions for failures vary from a penalty amount that is equivalent to one working day of a job seeker's payment to an eight week no payment period.

## Connection and reconnection failures

Attendance at appointments with employment services providers and at compulsory employment-related activities has always been required of job seekers. Where a job seeker fails, without reasonable excuse, to attend such appointments and activities then this may constitute a connection failure.<sup>7</sup> There is no immediate penalty for a connection failure, but the job seeker may be required to comply with a reconnection requirement. Typically this would entail attending a re-scheduled appointment or resuming the relevant activity. However, where the connection failure is due to a job seeker's not meeting their job search requirements, it may involve the completion of a job seeker diary.

If a job seeker fails to meet their reconnection requirement (usually a re-scheduled appointment with the employment services provider) without a valid excuse, then this amounts to a reconnection failure and sanctions apply. For every day that a job seeker fails to meet their reconnection requirement, they incur a penalty equivalent to their daily rate of income support payment. (This

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5. All job seekers negotiate an individually tailored EPP with their employment services provider. The EPP identifies the mix of vocational and non-vocational activities that job seekers will need in order to gain employment. The EPP incorporates education, training, non-vocational assistance, work experience, job search requirements and other support that is based on the needs of the job seeker.
  6. Job seekers may gain a temporary exemption from the Activity Test and an EPP requirement if they are sick, injured or unable to meet their activity test requirements because of a personal crisis. They may also be exempt from their participation requirements if they are undertaking an approved activity.
  7. A connection failure may also occur where a job seeker fails, without a valid excuse, to meet their job search requirements, attend an appointment that is an EPP requirement or enter an EPP.

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penalty does not include rent assistance and other non income support payment related add-ons.) The penalty amount for the reconnection failure is not able to be deducted until the income support instalment following notification of the reconnection failure. This means that there is a delay of up to a fortnight in the imposition of the penalty. As soon as the job seeker complies with their reconnection requirement, the penalty is lifted.

The connection and reconnection arrangements described above were introduced from 1 July 2009, along with the Government's new employment services program, Job Services Australia. It is important to note that it was initially intended that losses of payment for a connection failure would be incurred on the next day on which the job seeker's regular payment was due. This, it was hoped, would emphasise the link between the failure and the sanction. Concern about the hardships that this might cause led to the Social Security Legislation Amendment (Employment Services Reform) Bill 2009 being changed to delay the loss of payment for one payment period.<sup>8</sup> Hence, the current Bill effectively seeks to reverse the above amendment to reinstate the original intent of the earlier Bill, in this respect.

## Independent Review of the Job Seeker Compliance Framework

Under the *Social Security Legislation Amendment (Employment Services Reform) Act 2009* which introduced the current job seeker compliance framework, the Minister for Employment Participation was required to establish an independent review of the impact of the new compliance system. This review was conducted twelve months after the introduction of the current system, and the Independent Review report was tabled in Parliament on 30 September 2010.<sup>9</sup>

According to the Independent Review report, the compliance arrangements introduced in 2009 did much to address the problems that were recognised as arising under the 2006 compliance requirements. The 2009 arrangements enable less severe penalties to be applied earlier. This ensures that there are more immediate consequences for job seekers who fail to meet their participation requirements.

The 2009 arrangements also ensure that there is less opportunity for job seekers to become disengaged, than under the earlier arrangements. While job seekers may still incur the sanction of an eight week non payment period following three participation failures, this is now not imposed unless a Comprehensive Compliance Assessment determines that a job seeker has been persistently non-compliant.<sup>10</sup> Further, where a Serious Failure has occurred, and an eight week non payment

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8. P Yeend, *Social Security Legislation Amendment (Employment Services Reform) Bill 2008*, Bills Digest, no. 55, 2008–09, Parliamentary Library, Canberra, 7 November 2008, viewed 11 May 2011, <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd055.pdf>

9. J Disney, A Buduls and P Grant, op. cit.

10. A '**comprehensive compliance assessment**' is the way that Centrelink finds out why job seekers have not been meeting the Activity Test or participation requirements. The purpose of the assessment is to find out first, if there are any barriers to employment that make it difficult for a job seeker to go to activities or appointments; secondly if

period is imposed, the job seeker is given the option of undertaking an activity similar to work experience for the eight week period in lieu of the loss of payment.<sup>11</sup>

## Performance of current job seeker compliance arrangements

The authors of the Independent Review were at pains to stress that it was too early to draw firm conclusions about the overall impact of the 2009 changes to the job seeker compliance framework. They also pointed out that historical comparisons of job seeker compliance data needed to be treated with great caution given the significant changes in ‘labour markets, policy settings, administrative arrangements, concepts and terminology’ that have occurred over the past ten years.<sup>12</sup>

Bearing in mind these caveats, the Independent Review found that, at the end of the first year of the new system, there had been a significant reduction in the number of connection and reconnection failures when compared with the number of equivalent failures in the last year of the previous system.<sup>13</sup> The Independent Review also suggested that the new reconnection processes had contributed to improvements in the speed of re-engagement of job seekers. Nevertheless, the Independent Review argued that there might be room for further improvement with regard to job seekers’ attendance at appointments with employment services providers.<sup>14</sup>

Connection failures still made up a majority of compliance failures under the current system, with around 80 per cent of all failures relating to an alleged ‘failure to attend an appointment with a provider’. Despite the modest improvement in job seekers’ engagement with providers under the new system, the rate of attendance at appointments with providers still averaged 58 per cent during the first year of the new compliance system.<sup>15</sup>

The Independent Review did acknowledge that ‘there are many reasons why the attendance rate cannot reasonably be expected to approach 100% [including] job seekers finding work, falling ill or having some other unexpected problem after the appointment was made’.<sup>16</sup> The Independent Review also noted that it was too early to form conclusions about the longer term impact of changes to the system. Nevertheless, on the strength of the above findings, it was suggested that if there was no evidence of further improvement ‘in the next 12 months or so’, then it might be necessary to introduce financial sanctions for some connection failures.<sup>17</sup> It went on to stress, however, that such

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the job seeker’s participation requirements are appropriate to their circumstances; and thirdly if the job seeker needs more, or different, assistance to address any issues they may be experiencing.

11. Information about what constitutes a ‘*serious failure*’ can be viewed on the Centrelink website at:

[http://www.centrelink.gov.au/internet/internet.nsf/payments/serious\\_failure.htm](http://www.centrelink.gov.au/internet/internet.nsf/payments/serious_failure.htm)

12. Ibid., p. 55.

13. Ibid., p. 57.

14. Ibid., p. 81.

15. Ibid., p. 39.

16. Ibid., p. 59.

17. Ibid., p. 81.

penalties should not be applied to vulnerable job seekers and should be repayable when the job seeker agrees to another appointment.

Specifically, the Independent Review recommended that:

Consideration should be given to Centrelink having a 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
- the missed appointment has been agreed with the job seeker by Centrelink.

The suspension could be for, say, fourteen days subject to payment being restored with full back pay if the job seeker agrees to a new appointment for a date earlier than the end of the suspension period.

The loss of payments for a Reconnection Failure should commence from the date on which the failure is imposed, not the date of the failure itself.

Any losses of payment exceeding fourteen days should be repaid if the job seeker undertakes a Compliance Activity for the number of days in question, or is in financial hardship, on terms analogous to those applying to waiver of penalties for Serious Failures.<sup>18</sup>

## Application of the Independent Review to the Bill

The measures contained in the Bill depart from these recommendations of the Independent Review in several respects.

First, the Bill requires the payment suspension of all job seekers in the case of a connection failure, with the exception of job seekers with a Vulnerability Indicator. The Independent Review recommended that such suspensions only be applied to less disadvantaged job seekers (Stream 1 or 2) and in instances where the job seeker was clearly aware of their missed appointment.<sup>19</sup>

Secondly, the Bill imposes a loss of payment from the date of the failure, rather than, as recommended by the Independent Review, the date on which the failure is imposed.

Thirdly, the Bill does not allow for job seekers to 'work off' penalties for reconnection failures in excess of 14 days through participation in a Compliance Activity, or for them to be waived if the job seeker is in financial hardship. The former option is currently available to other job seekers who have committed a Serious Failure. This was a further Review recommendation.<sup>20</sup>

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18. Ibid., pp. 81–82.

19. Ibid.

20. Ibid.

## Basis of policy commitment

During the 2010 federal election campaign, the Australian Labor Party announced that it would, if re-elected, introduce tougher rules to ensure the attendance of job seekers at appointments with employment services providers or activities required by these providers. This was one of a range of measures calculated to 'help encourage workforce participation and focus new effort on modernising Australia's welfare system'.<sup>21</sup>

## Committee consideration

The Bill has been referred to the House Standing Committee on Education and Employment (the Committee) for inquiry and report.<sup>22</sup>

The Committee published its report on 11 May 2011. In that report, the Committee stated that it considered

... this Bill is a step in the right direction. It provides the opportunity for ESPs and Centrelink staff to reengage and reconnect with job seekers on a regular basis and reinforces the importance of engagement with ESPs to job seekers. It is crucial for job seekers to attend appointments with their ESPs, as those appointments are the first step to finding job seekers sustainable and ongoing employment.<sup>23</sup>

The majority of the Committee recommended that the Bill be passed (albeit with some recommended amendments).<sup>24</sup>

## Policy position of non-government parties

The position of the Australian Greens can be gleaned from the dissenting view expressed in the Committee report.

The minority report notes that:

All the witnesses and submitters agree with the Government that there are high rates of non-attendance at appointments with Centrelink and job service providers. There is a shared

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21. Australian Labor, 'Creating opportunity, requiring responsibility: modernising Australia's welfare system', viewed 9 May 2011, [http://parlinfo.parlInfo/download/library/partypol/3GOX6/upload\\_binary/3GOX6.pdf;fileType=application/pdf#search=%22modernising%20australias%20welfare%20system%22](http://parlinfo.parlInfo/download/library/partypol/3GOX6/upload_binary/3GOX6.pdf;fileType=application/pdf#search=%22modernising%20australias%20welfare%20system%22)
  22. The terms of reference, submissions to the Committee and final report can be viewed at: <http://www.aph.gov.au/house/committee/ee/socialsecurity/index.htm>
  23. Standing Committee on Education and Employment, Advisory Report on the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011, House of Representatives, Canberra, 11 May 2011, p. 42, viewed 11 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/report/fullreport.pdf>
  24. Ibid., p. 43.

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understanding that missed appointments waste resources and are frustrating for the staff involved.

However, this appears to have been a problem for some time. Further, most of the witnesses who gave evidence to the Inquiry disagree with the Government that the policy of suspending payments will work to meaningfully engage people with the system and further believe that the Bill will cause financial hardship that outweighs any potential benefit.<sup>25</sup>

The minority report by Australian Greens maintains that the policy enshrined in the Bill ‘will not deliver on its stated intention but rather will cause unnecessary further hardship to already disadvantaged people’.

Rather, according to the minority report, the Government should implement the recommendations of the Independent Review, ‘particularly those that go to simplifying the system and creating significantly improved communication systems, before there is any consideration of more punitive measures’.<sup>26</sup> The Australian Greens recommended that the Bill not be passed.<sup>27</sup>

## Position of major interest groups and main issues

A number of stakeholder groups have expressed significant concerns with regard to the changes outlined in the Bill.

It has been argued that there is insufficient evidence to suggest that the current compliance system is not working and therefore to justify the introduction of harsher measures such as those contained in the Bill.<sup>28</sup> For example, some commentators have pointed out that of the 42 per cent of appointments that were missed in the twelve months following the introduction of the current compliance arrangements, a majority (69 per cent) were found to have been the result of a reasonable excuse.<sup>29</sup> And, given that the non-attendance rate has consistently remained at or near its current level—including during periods in which the compliance arrangements were harsher than

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25. Ibid., p. 66.

26. Ibid., p. 69.

27. Ibid., p. 72.

28. Headspace, Submission: *Inquiry into the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, 4 April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub01.pdf>; Australian Council of Social Service (ACOSS), Submission to House of Representatives Education and Employment Committee, *Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub02.pdf>; Commonwealth Public Sector Union (CPSU), CPSU (PSU Group) Submission: *Inquiry into the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub10.pdf>; Anglicare Australia, Submission: *Inquiry into the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, 11 April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub13.pdf>

29. See J Disney, A Buduls and P Grant, Table A3: Attendance at appointments with providers, p. 90 and Table A6: Centrelink responses to participation reports, p. 93, respectively.

they are at present—there is little reason to believe that the changes contained in the Bill are likely to improve attendance rates.<sup>30</sup>

Following similar lines, it has been argued that in focusing simply on ensuring job seeker attendance at appointments and activities, the proposed policy is tackling the symptoms rather than the causes of job seeker non-attendance. Many of the submissions to the inquiry emphasise that, based on their experience of dealing with job seekers, most unemployed people are keen to work and to participate in any activities and assistance that focuses on their needs and helps move them towards the goal of employment.<sup>31</sup> They stress that it may be the case that the interviews and other interventions with which job seekers are being asked to comply are simply not ‘relevant and responsive to their individual needs and circumstances’.<sup>32</sup> Alternatively, such interviews and interventions may be perceived as such by job seekers; as merely ‘jumping through hoops’ or demonstrating compliance for the sake of it. Regardless of whether it is the former or the latter that is the case, it is argued that requiring job seekers to attend appointments and activities ‘might secure their obedience and attendance but will not address the problem’.<sup>33</sup>

Many of the submissions to the inquiry stress that a significant proportion of current job seekers is disadvantaged, and that the number of job seekers who are vulnerable is likely to exceed the approximately 20 per cent of job seekers who currently have a vulnerability indicator on their record.<sup>34</sup> This may be because many of these job seekers have failed to disclose sensitive and personal information, or because they may, or may not, recognise or admit that they have a particular vulnerability.<sup>35</sup> The problem, it is argued, is that it is these job seekers who are most likely to have their payments suspended and to incur penalties under the new arrangements contained in the Bill. It is already the case that disadvantaged and vulnerable job seekers are over-represented in non-attendance at employment service provider appointments.<sup>36</sup> Hence, it is argued that the imposition of sanctions on these job seekers is likely to exacerbate their existing problems and to further impede the likelihood of their moving into employment.

By demanding that employment services providers take on more of a policing rather than enabling or assisting role, some commentators argue that the measures will ‘change the relationship between staff and their clients, diminish trust, and distract from the key task of assisting people to find a

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30. See ACOSS, op. cit.

31. See for example UnitingCare Australia, Meaningful Employment: a new system of employment support for all Australians, 13 February 2008, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub05.pdf>

32. Jobs Australia, Jobs Australia Submission into the terms of reference for the Inquiry, 8 April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub03.pdf>

33. Ibid.

34. Due to, for example, recent psychiatric problems or mental illness, illness or injury requiring frequent treatment, drug or alcohol dependence, significant language or literacy problems and/or homelessness.

35. See for example UnitingCare Australia op. cit.; National Welfare Rights Network, Submission to the *Inquiry into the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, 12 April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub14.pdf>

36. J Disney, A Buduls and P Grant, op. cit., pp. 39–40.

meaningful job'.<sup>37</sup> Further, some maintain that the changes will add another layer of complexity to what the Independent Review has argued is an already too complex system, and detract from providers' capacity to establish useful and productive working relationships with job seekers.<sup>38</sup>

Some concerns have been expressed in relation to the demand that job seekers notify their employment services provider or Centrelink in advance of their excuse for non-attendance or be penalised, except in special circumstances. The Australian Council of Social Service, the Welfare Rights Centre and the National Welfare Rights Network each insist that to interpret an excuse for non-attendance as being reasonable only where it is given in advance of a missed appointment or activity amounts to an illegitimate use of the word 'reasonable'. Effectively, they argue, an excuse is either reasonable or it is not, irrespective of temporal factors. As the Welfare Rights Centre has it, 'one of the key facets of what is considered reasonable is that its flexibility and scope is not limited by when the reason is known'.<sup>39</sup>

The Commonwealth Ombudsman has expressed concern that the requirement for prior notification will impact heavily on many job seekers with vulnerabilities (who need not necessarily be formally identified as such):

... we are concerned that some vulnerable welfare recipients will not be well placed to provide information or evidence to satisfy Centrelink that they have a reasonable excuse for non-compliance, or that they should be excused from the requirement to provide prior notification on the basis of special circumstances. If these amendments remain in their current form then it will be imperative that Centrelink and DEEWR develop sensitive and flexible policies to underpin the decision making under these provisions.<sup>40</sup>

The Bill does allow for an exception to be made to the above requirement where the Secretary considers that there were 'special circumstances' in which it was not reasonable to expect the job seeker to notify the relevant person of their excuse for non-attendance in advance. Both the Welfare Rights Centre and the National Welfare Rights Network have taken issue with the word 'special' and the term 'special circumstances' as used in the Bill. They argue that the word 'special' is redundant given that there is already a requirement in the Bill that the Secretary be satisfied that it was not reasonable for the job seeker to have to give prior notification in the circumstances. Given that there is scope for disagreement as to which circumstances may, or may not, be understood as being reasonable, the Welfare Rights Centre further recommends that these circumstances be spelt out in a new subsection to the Bill.<sup>41</sup>

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37. Headspace, *op. cit.* See also CPSU, *op. cit.*

38. See Jobs Australia, *op. cit.*

39. Welfare Rights Centre, *op. cit.*

40. Commonwealth Ombudsman, Submission by the Commonwealth Ombudsman, *Inquiry into the Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011*, Conducted by the House Standing Committee on Education and Employment, April 2011, viewed 9 May 2011, <http://www.aph.gov.au/house/committee/ee/socialsecurity/subs/sub07.pdf>

41. *Ibid.*

Generally speaking, most of the submissions on the Bill to the inquiry recommended the retention of those elements of the existing compliance system that enable employment services providers to take into account individual circumstances. At the same time, these submissions support the implementation of those recommendations from the Independent Review that could improve levels of engagement and job seeker attendance at appointments and activities. If the Bill were to be implemented in its current form, then the main concern was that guidelines should be developed to ensure that penalties would be imposed on vulnerable job seekers only as a last resort and under conditions that minimise their negative impact.

## Financial implications

According to the Explanatory Memorandum, the Departmental costs associated with the measures contained in the Bill are to be absorbed.<sup>42</sup>

## Key provisions

**Items 1–17** of Schedule 1 to the Bill amend Division 3A of Part 3 of the SSA Act which contains the provisions about a person's compliance with obligations in relation to participation payments. The remaining provisions of the Bill are consequential or application provisions.

Subsection 42C(1) sets out the circumstances in which the Secretary may determine that a person commits a **'no show no pay failure'**. **Item 2** inserts **new paragraph 42C(4)(c)** to specify that during a reconnection failure period, the Secretary cannot determine that a person has committed a **'no show no pay failure'**.

Subsection 42E(1) provides that the Secretary may determine that a person commits a **'connection failure'** in the circumstances listed in subsection 42E(2). **Item 4** amends paragraph 42E(2)(a) so that where a job seeker is notified of the requirement to attend an appointment or activity under subsection 63(2) or 63(4) of the SSA Act, and then fails to attend, that failure will, of itself, be a **'connection failure'** and may result in a suspension of payment.

**Item 6** repeals and replaces section 42G to set out the new **'reconnection requirements'**. **New section 42G** provides that the Secretary must require a person to comply with a **'reconnection requirement'** wherever a job seeker is considered to have failed to attend an appointment or activity, without having to find a connection failure. The effect of the amendment is that the issue a reconnection requirement in such instances enables the job seeker to have their income support payment reinstated by complying with the requirement.

Subsection 42H(1) provides that the Secretary may determine that a person commits a **'reconnection failure in certain circumstances'**. **Item 8** amends subsection 42H(5) to enable any loss

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42. Explanatory Memorandum, Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011, p. 2.

of payment as a result of a reconnection failure to be deducted immediately from a job seeker's income support payment, rather than from the following fortnightly payment, as is currently the case.

**Items 9, 10 and 11** amend section 42J to enable the Secretary to issue a further reconnection requirement to a job seeker who has failed to meet their reconnection requirement, without having to consider whether or not the job seeker had a reasonable excuse for the failure (as is currently the case).

Section 42K contains notification requirements. **Item 12** amends section 42K to provide that the Secretary must notify job seekers of the consequences of their failure to comply with a reconnection requirement; namely, payment suspension and/or a penalty amount being deducted from their income support payment.

**Item 13** amends subsection 42K(2) to remove the requirement that a job seeker be given at least one day's notice of a reconnection requirement, before the required appointment or activity. This amendment gives employment services providers the flexibility to issue a reconnection requirement on the same day as the appointment or activity. UnitingCare Australia has expressed concern that, if used inappropriately, the provision could 'create difficulties for those people who cannot re-prioritise their lives at such short notice'.<sup>43</sup>

**Item 14** inserts **new subdivision EA** into Division 3A. Within the new Division, **new subsection 42SA(1)** stipulates that a job seeker's income support payment is not payable where they fail to attend a required appointment or activity, or if they fail to comply with a reconnection requirement or a further reconnection requirement. The section also requires that a reconnection requirement be imposed where a job seeker fails to attend a mandatory appointment or activity. **New subsection 42SA(2)** sets out the period during when a job seeker's income support payment is not payable. The payment is suspended immediately upon failure to attend a required appointment or activity (including a reconnection requirement). The payment resumes at the end of the day before the day when the job seeker notifies the Secretary of their intention to comply with their reconnection requirement. The Secretary has discretion to end the suspension earlier, if considered appropriate. The effect of **new subsection 42SA(3)** is that as soon as a job seeker notifies the Secretary of their intention to comply with their reconnection requirement, they will be back-paid for the period in which their payment was suspended.

**Item 15** inserts **new section 42UA** which requires that job seekers must advise the relevant person of their excuse for failure to contact a specified person, or non attendance at an appointment, or activity, before the relevant event. The section specifies that the Secretary may consider a job seeker's excuse to be 'reasonable' in the absence of prior notice, if he or she is satisfied that there were 'special circumstances' that made it not reasonable to expect the job seeker to give prior notification.

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43. UnitingCare Australia, op. cit.

**Item 19** amends paragraph 64(1)(e) of the SSA Act to enable the Secretary to suspend a job seeker's income support payment where they fail to attend a required appointment or activity, immediately upon failure, without having to first consider whether or not the job seeker has a reasonable excuse for the failure.

## Concluding comments

Job seeker compliance arrangements are a difficult area. Penalties need to be available and at times applied so as to ensure compliance. However, compliance requirements need to be flexible and reasonable, given the wide variety of job seekers and their many and varied circumstances. Most job seeker non-compliance is a result of ignorance or a reasonable excuse, rather than job seekers being deliberately wilful. That said, in some cases, job seekers wilfully and repeatedly avoid reasonable activity requirements without a reasonable excuse. In these instances sanctions have a place. The challenge is to develop a compliance regime that enables sanctions to be applied without penalising those job seekers who are vulnerable or who simply have difficulty in understanding the requirements that are placed upon them.

The legislative changes in this Bill seek to improve job seeker attendance at scheduled appointments and activities through the imposition of tougher requirements and sanctions.

A number of commentators have expressed doubts as to whether the changes are likely to achieve this goal. They insist that there is a weak argument and poor evidence base for the proposed harsher approach. If job seeker attendance rates are to be improved, they maintain, what is required is an evidence-based understanding of the causes of non-attendance at appointments and activities. Any such evaluation of why job seekers are failing to meet appointments should focus, in particular, on whether or not Centrelink and employment services are meeting the needs of disadvantaged job seekers.

Further concerns have been expressed with regard to the potential for the proposed new arrangements to result in considerable hardship for many of the increasingly disadvantaged and vulnerable job seeker population. The initial suspension of a job seeker's income support payment for failure to attend an appointment or activity need not necessarily result in a penalty so long as the job seeker attends a re-scheduled appointment. However, there are concerns that because a significant number of job seekers are now disadvantaged, many suspensions could easily become penalties.

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