

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2014 - 2015

Outcome 1 - Employment

Department of Employment Question No. EMSQ15-000080

Senator Lines asked in writing

Question

Changes to process for non-compliance

As per the Draft Employment Services Deed 2015-2020, published on 30 March 2015, can you explain what occurs when a participant fails to comply with their Mutual Obligation Requirements and what parties are responsible for assessing and making determinations at each point through this process?

This process as described in section 2.15 of the request for tender documents appears to be different to that which is now described in the Draft Employment Services Deed 2015-2020, published on the departments website on 30 March 2015, is this correct, and if so, why?

Are employment providers now responsible for assessing if a participant had a Reasonable Excuse for not complying with a Mutual Obligation Requirement?

If not, and the department is still responsible for this assessment what evidence do the department use to make this assessment and how has this process changed to the current process?

Do employment providers have discretion not to take action under the compliance framework or not to report non-compliance to the Department as they currently do and as was described in section 2.15.1 of the request for tender documents?

If not, why not, given such discretion was outlined in the request for tender?

Are employment providers now responsible for determining whether any action should be taken under the job seeker compliance framework in relation to an event of non-compliance?

If so, why has this change been made, given it was not outline in the request for tender and given the significant concerns raised by providers and advocates that it would undermine the relationship between providers and job seekers and potentially undermine the safety of employees?

Answer

The Draft Employment Services Deed 2015-2020 published in March 2015 is consistent with the request for tender document released in October 2014.

The Department of Human Services (DHS) will continue to make all reasonable excuse and financial penalty determinations under social security law when job seekers fail to meet their mutual obligation requirements.

As is the case now, employment services providers will continue to choose whether to initiate the process for reporting non-compliance to DHS. This means they continue to have the discretion not to report non-compliance.

The Employment Services Deed 2015-2020 simply reflects that providers need to make an 'assessment' of whether they think a job seeker has a reasonable excuse post an event of non-compliance. The provider can then choose if they will report the non-compliance to DHS or not. If they choose to do so, DHS will be responsible for making the reasonable excuse determination under social security law.

The definition of reasonable excuse includes both the reason given by the job seeker for the non-compliance, and whether it was reasonable to expect the job seeker to have given prior notice of their inability to comply. As they do now, DHS base their decisions on the principle of natural justice, and will use the following sort of information when making these determinations under social security law:

- the job seeker's account of the incident in relation to what the provider has reported;
- their capacity and any personal issues, and whether these impacted on the day; and
- the job seeker's history of compliant and non-compliant behavior.