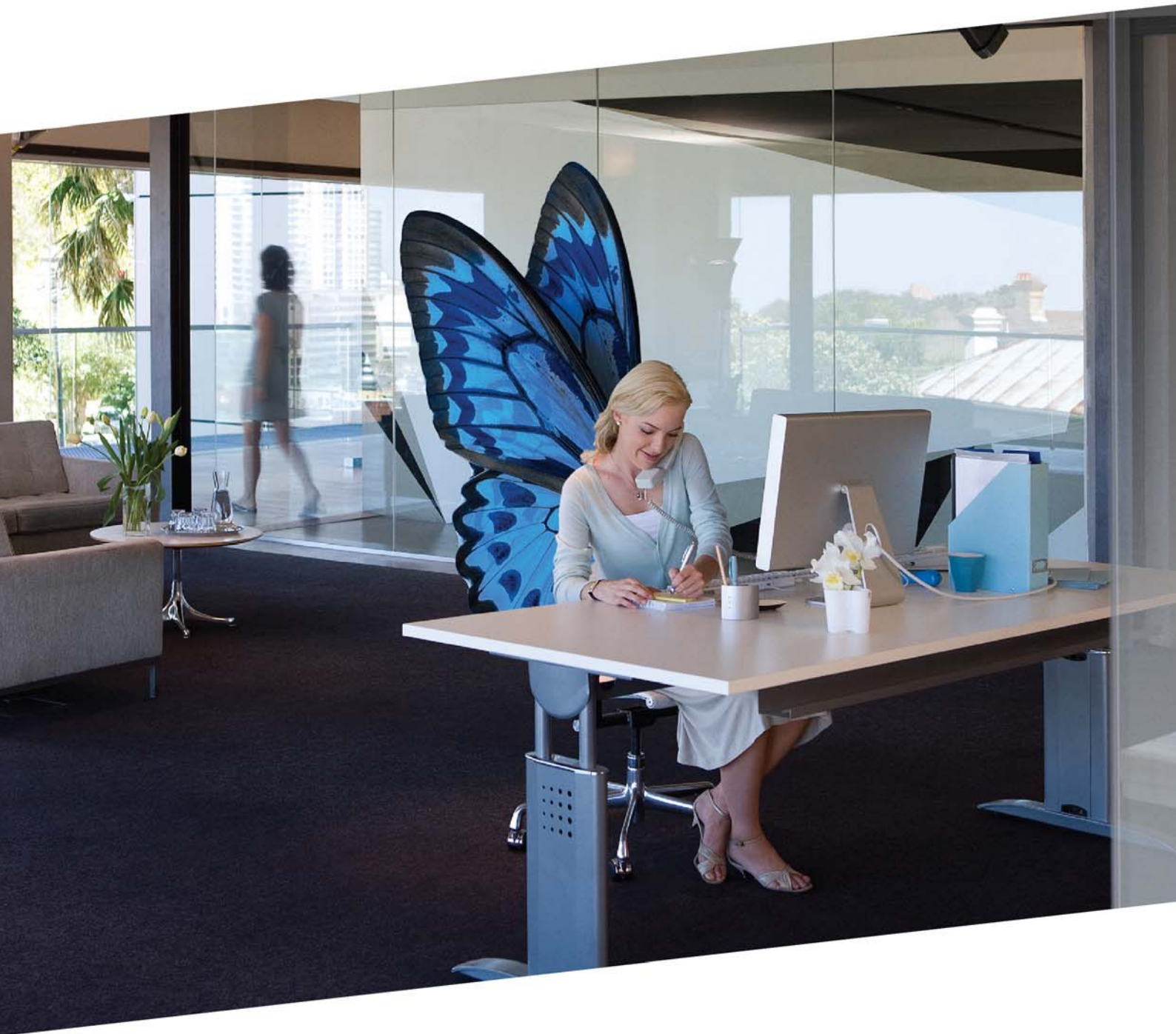


**Mission Australia Submission to the
Senate Inquiry into the
*Social Security Legislation Amendment
(Employment Services Reform) Bill 2008***



About Mission Australia

Mission Australia is one of Australia's leading charities and community services organisations. Our vision is to see a fairer Australia by enabling people in need to find pathways to a better life.

This vision is underpinned by our mission to help people discover:

- pathways to strong families and healthy children
- pathways through a successful youth
- pathways away from homelessness
- pathways to skills and qualifications
- pathways to sustainable employment

We are a major provider of Job Network and complementary employment services programs and have been delivering such services to the most disadvantaged Australians for over 25 years. We currently deliver a range of programs administered by the Department of Education, Employment and Workplace Relations (DEEWR) and the Department of Human Services (DHS) to eligible job seekers.

We operate from over 200 employment services sites in every State and Territory across Australia. During the 2006/07 financial year we assisted 202,644 job seekers, including placing 73,346 into work.

Our 285 community services across Australia provided assistance to 130,000 people in 2006-07. Mission Australia services offer a range of programs that provide pathways away from homelessness, pathways through a successful youth, and pathways to strong families and happy healthy children.

Mission Australia is also a Registered Training Organisation and in 2006-07 we assisted more than 5,500 people through programs like Language, Literacy and Numeracy Program (LLNP) to help them find pathways to skills and qualifications.

Together our service streams provide and enhance both the opportunities and means for us to work with of some of Australia's most disadvantaged people as they seek to find pathways to a better life.

Mission Australia has a number of programs that very strongly demonstrate our innovative approaches to addressing disadvantage and fostering social inclusion. Among these is Catalyst-Clemente program which offers higher education in the humanities to disadvantaged Australians, many of whom have faced and continue to face significant life challenges and barriers in accessing education and employment. The higher education subjects are delivered in a community setting. Our Urban Renewal Employment Program (UREEP) is a transitional labour market program focused on providing additional training and support to longer term unemployed people and is another of example of our approach to addressing disadvantage where it is most entrenched.

Introduction

Mission Australia makes this submission to the *Inquiry into the Social Security Legislation (Employment Services Reform) Bill 2008* ("the Bill") in our capacity as a national community services, training, and employment services provider with extensive experience in working with some of Australia's most highly disadvantaged people. Our experience in delivering services is backed by a strong and growing research agenda which aims to build a sound evidence base that informs innovation in our service delivery models and practices, as well as government policy development.

Mission Australia welcomes the Government's approach to achieving social inclusion for Australia's most disadvantaged and marginalised people. Participation in employment is well recognised as being a fundamental pathway to social inclusion. It is one which can provide individuals with greater means and capacity to address other personal barriers and challenges that may exist or emerge over the life course.

As the Intergenerational Report (Australian Government, 2007) outlines it is growth in labour force participation rates, together with growth in productivity and the proportion of the population that is of working age that will determine Australia's prosperity levels into the future. On the back of unprecedented economic growth in recent years, we know that many Australians have been left behind and have remained or become long-term unemployed. The Government's approach to social inclusion which ensures that increasing participation levels is a core element, while simultaneously seeking to address the systemic and more fundamental barriers to inclusion, such as homelessness, is one that Mission Australia supports.

The new Universal Employment Services model is an important feature of the Social Inclusion Agenda. The stream services, together with elements such as the Innovation Fund Panel and the Employer Broker Panel, offer greater opportunities for employment services providers to work flexibly and innovatively with the most disadvantaged job seekers. Mission Australia hopes that the new model will be well complemented by the results of the pending reviews of the Job Seeker Classification Instrument (JSCI) and the Jobs Capacity Assessment. The capacity of the new model to respond to an anticipated growth in unemployment is however an emerging issue.

Our comments in relation to the *Social Security Legislation (Employment Services Reform) Bill 2008* focus firstly on our assessment of the broader policy implications of the changes proposed in the Bill. In particular, the likelihood of whether they will achieve the objectives stated in the Bill and their impact on the most disadvantaged. As a provider of employment services who along with other providers and Centrelink, will be responsible for the implementation of the changes, we also highlight some of the possible operational impacts of the changes.

There are a number of areas where further clarification is required or we are not able to provide a full assessment of the likely impacts of the changes until the proposed legislative instruments referred to in the Bill are drafted or relevant matters included in the legislation proper. We also offer suggestions of matters for further consideration and action that would assist the efficient and effective implementation and ongoing administration of the proposed changes.

The Policy Objectives

Mission Australia supports the general intent of the changes proposed in the Bill. The inclusion of a specific “Object” in the Bill that emphasises the aim of encouraging participation in employment and engagement with employment services providers is especially welcomed. Also welcome is the introduction of financial hardship provisions which can be applied in instances of Serious Failure where it is determined that the job seeker does not have the capacity to comply with a requirement and the application of an extended non-payment period would result in severe financial hardship.

While Mission Australia recognises the need for an appropriate system of activity requirements and related compliance system for job seekers in receipt of income support, we believe that it is paramount that any such system is built on a principle of positive and proactive engagement with job seekers. The primary objective must always be to ensure that job seekers have access to, and utilise the services that will assist them to achieve sustainable employment outcomes. Implicit in this, is the need for the service system to provide support to job seekers to identify and address any vocational and non-vocational barriers to achieving these outcomes. In this context, the service model under the new Universal Employment Services model and the explicit streaming of job seekers according to their levels of disadvantage appears to offer the necessary flexibility to achieve this.

Overall, the Bill represents both a symbolic and practical shift in the approach to compliance. It moves the system from a punishment paradigm with penalties that are in many instances disproportionate to the breaches to which they applied, to a framework for engagement with non-payment periods generally proportional to the failure/s to comply.

Beneficial impacts

Specifically, the elements of the Bill that Mission Australia considers are likely to have a beneficial policy impact are:

- The introduction of a staged compliance regime consisting of connection failures, reconnection failures and no show no pay failures before consideration is given to the imposition of an eight-week non-payment period. This provides numerous contact points for employment services providers to re-engage positively with job seekers that have had difficulty in engaging and use these opportunities as a means of identifying possible job seeker barriers that may not have been disclosed.
- The introduction of non-payment periods (‘reconnection failures’ and ‘no show no pay’ failures) that are intended to reflect a work-like culture. Mission Australia actively supports opportunities for job seekers to engage in a work-life culture, including through our own expectations of job seeker behaviour in their dealings with us as a provider. For example, we expect job seekers referred to us to arrive punctually for appointments or telephone when ill to reschedule appointments.

In addition, we consider that the new non-payment methodology creates an appropriate proportionality between the nature and seriousness of the failure to comply and the penalty that is imposed. Associated with this, the restriction that penalty amounts can only be applied to core income support payments and the relevant portion of any participation allowances is appropriate.

- The intention stated in the Second Reading Speech and referred to in the Explanatory Memorandum to introduce a Comprehensive Compliance Assessment by a specialist Centrelink officer prior to an eight-week non-payment period being imposed. This initiative should, if implemented effectively, provide a mechanism that will ensure that the job seekers' 'capacity to comply' is fully assessed and barriers to engagement are identified so that referral to services to address primary needs can occur.
- The provision that the Secretary may exercise discretion in the application of an eight-week non-payment period, if implemented effectively, should achieve some of the intended flexibility by ensuring that indiscriminate penalties are not imposed and the particular circumstances of the individual job seekers are taken account of.
- The introduction of provisions whereby the job seeker can work off an eight-week non-payment period by engaging in a period of intensive activity and the ability of the Secretary to apply hardship provisions if a job seeker is unable to work off an eight week penalty introduce elements of fairness that are lacking in the current legislation.

The hardship provisions are particularly important for ensuring that the most disadvantaged Australians are not subjected to further financial hardship. The imposition of extended non-payment periods without consideration of financial hardship is necessarily a self-defeating exercise. It is unlikely to generate the level of job seeker engagement that is required to move onto a pathway that will lead to sustainable employment or assist to address any non-vocational barriers that exist for the job seeker.

Instead, extended non-payment periods create a serious risk that non-vocational barriers, such as being at risk of homelessness, will in fact worsen due to the lack of access to adequate financial resources. Additionally, they may simply shift the cost of supporting individuals from welfare payments to welfare services.

Areas of Concern

Despite our support for the Bill's general intent, there are a number of areas where we are concerned that the current provisions of the Bill will not achieve its stated objective. These are:

Comprehensive Compliance Assessment – the Explanatory Memorandum to the Bill states that "in practice a decision maker will need to conduct a Comprehensive Compliance Assessment:" (p. 14 *Explanatory Memorandum* Section 42M), yet the Comprehensive Compliance Assessment is not explicitly referred to in the Bill.

We recommend that *at a minimum* the trigger for a Comprehensive Compliance Assessment be included in a legislative instrument that sets out the range of factors that the decision-maker should have regard to when undertaking the assessment. This will ensure transparency in the decision-making process and assure providers that the process serves to foster, not discourage, meaningful engagement with job seekers.

We recommend that the Comprehensive Compliance Assessment specifically take account of the multiplicity of factors that can impact on the capacity of highly disadvantaged job seekers to comply with activity requirements. For job seekers categorised Stream 4, a singular reason for non-compliance in a given circumstance may not be considered a 'reasonable excuse', but for this group of job seekers it is important to understand and acknowledge that it is the co-occurrence of several factors that together may constitute reasonable excuse and/or go to the core of the job seekers capacity to comply.

Minimum number of participation failures that would trigger a Comprehensive Compliance Assessment is not specified – the Second Reading Speech in relation to the Bill states that " a job seeker who incurs three failures for not attending appointments or six days of *no show no pay failures* in a six month period will be referred for a Comprehensive Compliance Assessment conducted by Centrelink" but no specifics are included in the Bill. The Bill instead refers to "persistent non-compliance" and refers to the Minister determining, by legislative instrument, what matters must take into account in deciding whether "a person persistently failed to comply..."(Section 42M)

We recommend that the Bill be amended to include a definition of 'persistent' to provide certainty and transparency job seekers.

Inability to end a Serious Failure Requirement in certain circumstances – the inability of a job seeker who is voluntary unemployed or is dismissed for misconduct to have the opportunity to work off an eight-week non-payment period would appear to be counterproductive to achieving the policy intent of job seeker engagement.

We recommend that the legislation be amended to allow all job seekers that have an eight-week non-payment period applied to them have the opportunity to engage in a 'serious failure requirement' in order to access income support payments irrespective of the reason for unemployment. That is, the legislation needs to be amended such that the ability of the Secretary to end a person's unemployment non-payment period is not limited to the circumstances currently specified in Section 42S(4).

A willingness by job seekers to engage in periods of intensive activity, even when due to the application of a 'serious failure requirement', is to be encouraged and recognised. It serves to maintain continuity of engagement with an employment services provider and participation in activities that are intended to support the achievement of sustainable employment outcomes.

Lack of Secretary's discretion when deciding whether to register a 'no show no pay failure' – The Bill appears to have some internal inconsistencies regarding the application of discretion in respect of determining penalties for non-compliance. The Bill provides explicit provision for the Secretary to exercise discretion when determining whether a Serious Failure has occurred. In contrast the Bill, in its use of "must" rather than "may," does not appear to provide the Secretary with discretion to determine whether or not to apply a 'connection failure', a 'reconnection failure' or a 'no show no pay' failure, other than where the job seeker has a 'reasonable excuse'.

By extension, this suggests that employment services providers do not have the discretion to *not* report participation lapses. Yet the Second Reading Speech in relation to the Bill states “Further, employment services providers will be able to exercise their professional judgement. A provider will not be required to report non-compliance to Centrelink if it is reasonable to believe that compliance is not the best means of securing engagement...”

Clarity is needed on this point, as a lack of discretion reduces the flexibility of providers to develop innovative and effective local engagement strategies that are tailored to the needs of job seekers in the Employment Services Areas they service. For example, one Mission Australia site that was experiencing low attendance rates cited lack of public transport as a common reason for non-compliance. In response the site commenced running Job Search Training in local community centres near the local housing estates in order to encourage participation and engagement by job seekers. This has resulted in reduced rates of non-compliance.

A compulsory requirement to lodge participation reports regardless of whether the employment services provider considers it appropriate in a particular circumstance would simply serve as a distraction from the primary objective of job seeker engagement. In many instances it will serve to discourage job seekers working actively with their provider, particularly in instances of a first time occurrence.

We recommend that the Bill be amended to ensure a consistent approach to the application of discretion in respect of determining penalties for non-compliance. Specifically, the discretion allowed for in the Bill in respect of decisions relating to ‘Serious Failures’ should be extended to decisions in respect of ‘connection failures’, ‘reconnection failures’ and ‘no show no pay failures’. This should include decisions by employment services providers in relation to whether or not to submit a Participation Report to Centrelink in respect of an individual job seeker.

Adoption of this recommendation would ensure that the new legislation is consistent with the current practice of employment services providers following receipt of a letter from the Hon. Brendan O’Connor, Minister for Employment Participation. Minister O’Connor’s letter sent to all employment services providers stated that all providers can exercise considerable discretion when deciding if a Participation Report should be submitted following an apparent incidence of non-compliance. The letter reinforced that providers should not submit a Participation Report in instances where a job seeker has a reason for failing to meet their requirement or where the provider is satisfied that the job seeker would comply with the requirement if given another opportunity to do so and that any barriers to a job seeker’s capacity to comply with their requirements must be taken into consideration.

Operational Impacts

As highlighted in the introduction to this submission, Mission Australia works with disadvantaged Australians and job seekers in a number of capacities. At a policy level our interest lies in assessing the impact of the proposed legislation on job seekers, in particular for those who are most disadvantaged or at greatest risk of social exclusion. However, in our capacity as an employment services provider we are also concerned with the operational impacts of the Bill on the capacity of providers to engage with the job seeker in a positive and constructive manner.

Areas of Concern

Mission Australia is keen to ensure that the proposed changes do not result in an increase in administrative activity that will undermine the efficiency and effectiveness of providers in achieving their primary objective: to achieve sustainable employment outcomes for job seekers.

The Request for Tender for Employment Services 2009-12 outlines (p.5) that a significant feature of the new Employment Services is a significant reduction in administration as compared to the current system. The administrative requirements that will result from the proposed changes outlined in the Bill must be measured against this standard. In this context, the matters that concern us are:

Potential increase in administrative burden on providers – while we acknowledge that legislation may not the place to specify the details of an administrative process it is not possible to discern from a review of the Bill and the Explanatory Memorandum the likely administrative requirements on providers as a result of the proposed changes. As such, we ask that caution be applied during the implementation phase to prevent the process for administering the new system of penalties for non-compliance from becoming an end in itself. The administration requirements of the proposed changes must be only the minimum required to give effect to the policy objective of encouraging participation and engagement.

We recommend that the Government work with employment service providers through the industry bodies (National Employment Services Association (NESA) and Jobs Australia) to map the administrative requirements of the proposed changes. This includes consideration of the requirements needed in the DEEWR IT system to assist employment services staff to make correct decisions regarding Participation Reports. This will ensure that the requirements are appropriate for the purpose and do not create an unintended consequence of increased administrative burden on providers.

Consistency in decision-making – two criticisms made by providers in relation to the existing contractual requirements for employment services are (i) a reported lack of consistency by Centrelink in decisions relating to Participation Reports; and (ii) lack of clarity on DEEWR's expectations regarding Participation Reports and the impact of lodgement rates on performance ratings.

Mission Australia sites have reported that despite DEEWR's explicit requirements of providers regarding the lodgement of Participation Reports, Centrelink have not upheld a high percentage of the reports. This has had the effect of job seekers receiving inconsistent messages regarding compliance requirements and the consequences of non-compliance, thereby undermining the ability of providers to effectively engage with the job seekers.

We recommend that clear guidelines are provided to both Centrelink and Employment Services providers regarding the lodgement and performance expectations relating to Participation Reports and a mechanism implemented to monitor and ensure consistency of approach to decision-making within Centrelink.

'Serious Failure' Activity Requirements – the new Universal Employment Services contract places a high emphasis on work experience and the availability of 'activities' for job seekers to engage with. This will extend to ensuring that appropriate activities are available for job seekers who are seeking to end a serious failure period to participate in. Work for the Dole will be a key activity in this context.

We recommend that the number of available activities needed specifically for the purposes of job seekers meeting 'Serious Failure' Activity Requirements is monitored to ensure that the expectation on providers does not increase significantly beyond what is envisaged by the Request for Tender and therefore create a higher-than-anticipated cost for providers.

Areas Requiring Clarification

There are a number of aspects of the Bill that require clarification before Mission Australia can provide comment on whether they create benefits or risks to job-seekers and the consequential impacts on employment services providers:

Legislative Instruments - The Bill refers, in a number of places, to the Minister or Secretary making determinations under a 'legislative instrument' [Section 42M – Matters to be taken into account when deciding whether a person persistently failed to comply; Section 42U – Matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for a 'no show no pay failure', a 'connection failure', a 'reconnection failure' or a 'serious failure'; Schedule 3 – the Secretary may, by legislative instrument, specify activity requirements for job seekers who are categorised 'Stream 4' and are likely to have significant non-vocational barriers to employment.].

While Mission Australia acknowledges that it may not be possible to include the full details of the proposed changes in primary legislation, the limitations of this approach are that secondary legislative instruments generally receive less intensive scrutiny and are tabled for only a short period before they have the force of law. The probable consequences of this are reduced protections for job seekers, in particular those most disadvantaged and at risk of social exclusion, and the legislation not operating in practice as the policy intends.

We recommend that the Bill be closely examined to ensure that matters currently slated for inclusion in a legislative instrument cannot reasonably be included in the primary legislation and therefore benefit from full parliamentary scrutiny.

We recommend that where a legislative instrument is still deemed necessary that it is appropriately scrutinised by parliament and interested stakeholders to ensure that its operational elements are consistent with the stated primary objective of encouraging participation in employment and engagement with employment services providers.

Comprehensive Compliance Assessment – the Second Reading Speech in relation to the Bill indicates that employment services providers will have the capacity to trigger a Comprehensive Compliance Assessment for job seekers. The situations in which this will be permissible for employment services providers and the performance expectations in respect of the Universal Employment Services contract are not yet clear.

Clarity is also required regarding the job seekers' status when they are required by Centrelink to undergo a Comprehensive Compliance Assessment, or have alternatively been referred by their employment services provider for such an assessment. It is important that both the job seeker and employment services providers are clear on what servicing is required by the provider while a job seeker is awaiting an assessment.

We recommend that consistent with our earlier suggestion that *at a minimum* the trigger for a Comprehensive Compliance Assessment be included in a legislative instrument that sets out the range of factors that the decision-maker should have regard to when undertaking the assessment. The legislative instrument should outline the circumstances in which employment services providers may initiate a Comprehensive Compliance Assessment for job seekers.

This will limit the risk that job seekers are 'bounced' between Centrelink and employment services providers, which could occur if a job seeker is referred by a provider to Centrelink for a Comprehensive Compliance Assessment only to have Centrelink decide that an assessment is not appropriate for that job seeker.

We recommend that during the period a job seeker is awaiting a Comprehensive Compliance Assessment the job seeker is exempted from the provider's active caseload, in recognition that a decision is pending and a key question that the assessment is seeking to resolve is the job seeker's capacity to comply.

While the job seeker may choose to voluntarily engage with their employment services provider, imposing compulsory servicing requirements on providers in respect of this group will be counter-productive.

Areas for Improvement

The effectiveness of the implementation of the proposed changes will be a factor that will influence the success of the legislation in achieving its objectives. In this context, Mission Australia considers that two elements are critical:

Communication – the nature of the proposed changes is such that unless the changes are explained clearly and simply to both job seekers and employment services providers there is likely to be inconsistent application of the new provisions and resulting confusion for job seekers, employment services providers and Centrelink alike.

We recommend a clear and consistent communication campaign be developed that targets both job seekers, employment services providers and Centrelink in the lead-up to, and immediately following, implementation on 1 July 2008.

The objectives of the campaign should be to:

- (i) ensure job seekers are well-informed and minimise confusion;
- (ii) maximise job seeker engagement;
- (iii) ensure consistency in application by employment services providers; and
- (iv) ensure consistency in decision-making by Centrelink.

Post-Implementation Review – the nature of the proposed changes is such that a review of whether the new system of penalties is effective in achieving the policy and legislative intent is warranted.

We recommend that the Government outline a process for reviewing the impact of the proposed changes on job seekers which includes a mechanism for obtaining employment services providers' feedback six-months following implementation.

Mission Australia considers that given the existence of baseline data from the current regime, six-months will be sufficient to determine whether the proposed changes, once implemented, are achieving the desired objectives outlined in the Bill. Following such a review, the Government must be prepared to act on any evidence that indicates the legislation is not working as was intended.

Conclusion

Mission Australia is generally supportive of the intent of the Bill and a number of the key features of the proposed changes. We have outlined those areas that are of particular concern to us and included recommendations for changes. We would welcome further clarification on those areas that we have flagged as they go to the very core of whether the Bill, once it is passed into legislation, "will work" and achieve what is intended. We also urge the Government to consider adopting our suggestions in relation to the implementation and review of the proposed changes post-implementation.

This Bill represents an important shift in the paradigm in which we work with job seekers, particularly those who are most disadvantaged and at greatest risk of social exclusion – from one of punishment to one of engagement. It is critical therefore that the Government continue to seek advice from, and work with, employment service providers to ensure that the intent of the Bill can be operationalised.