

## **Social security legislation amendment (job seeker compliance) Bill 2011**

ACOSS welcomes the opportunity to provide a brief submission on this legislation.

### **The Bill's key provisions**

The Bill, if passed, would bring forward penalties for unemployed people who do not attend appointments with Centrelink or employment service providers. Instead of warning a jobseeker on the first occasion they fail to attend an appointment and rescheduling the appointment, Centrelink will suspend their income support until they make contact and agree to attend a rescheduled appointment. This will occur regardless of whether the person had a 'reasonable excuse' for not attending. At this point the person will then be back-paid any income support foregone as a result of the suspension. If the jobseeker does not attend the rescheduled appointment (a 'reconnection failure'), their payment will again be suspended but this time without the back-payment available in the present system.

Further, back-payment will not be available after a 'reconnection failure' regardless of whether the person had a reasonable excuse for not attending the original appointment. We understand that those with a 'vulnerability indicator' (such as homeless people and people with a mental health condition) will not have their payments suspended on the first occasion but will be suspended and penalised on failure to 'reconnect'.

The Bill also introduces a requirement for jobseekers to notify the provider or Centrelink in advance if unable to attend an appointment. Except for 'special circumstances', where they do not do this a 'reasonable excuse' (such as illness or caring requirements) will not be accepted.

ACOSS does not believe that a strong enough case has been made for these changes, which will substantially increase the number of times that unemployed people are penalised or have their payments suspended for not attending appointments. We therefore recommend that the Bill be opposed.

### **The likely implications for unemployed people**

There are legitimate reasons that jobseekers do not attend appointments including lack of information or confusion about the requirements, vulnerabilities such as those described above, or the need to attend urgently to other business such as a job interview or a sick family member. Suspending payments without warning will inevitably lead to financial hardship in many cases, especially where the jobseeker is relying on the next payment to pay an essential bill such as rent. The Bill provides that payments will be suspended regardless of whether the person had a reasonable excuse for not attending. By contrast, in the present system, jobseekers are first given an opportunity to explain their failure to attend and to re-engage, before their payments are affected.

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The lack of back-payment for 'reconnection failures' is of greater concern because Newstart Allowance recipients (who receive \$239 per week in the case of a single adult) usually have no significant savings, are often heavily in debt, and have no capacity to absorb the loss of part of their payment. It is unconscionable to impose penalties at this stage in cases where the jobseeker had a reasonable excuse for not attending the original appointment.

The purpose of the 2009 reforms to the compliance system, which ACOSS broadly supported, was to shift the emphasis from punishment for past 'participation failures' towards re-engagement. The lack of reinstatement of payments on compliance for reconnection failures runs counter to the intent of those reforms.

The purpose of penalising jobseekers for not notifying their inability to attend in advance is not clear. If they had a good reason for not attending and do re-engage, the stated goal of the policy has been met and it is less likely that they will fail to attend appointments in future. The risk here is that people with poor literacy and those who are simply fearful of contacting Centrelink or JSA providers will be needlessly penalised.

In theory, the proposal to bring-forward the suspension of payments to the first occasion that a jobseeker misses an appointment (a connection failure) is consistent with the 'early intervention' approach, but in practice the requirement to attend the second ('reconnection') appointment should follow within a few days so that penalties need not be unduly delayed in the present system. If suspension of payments and refusal of back-pay are 'accelerated' as proposed, many people who did not intentionally fail to attend interviews or who had a good reason for not doing so, will experience financial hardship because the system will not take the time to assess their circumstances properly. Although, in the event of a connection failure, payment would be reinstated once the jobseeker is contacted and agrees to attend, the financial damage has often already been done. This is especially so in cases where a payment is due late in the week and the person has to go for a weekend without payment, or where an important bill such as a rental payment must be made at this time. Service providers often charge fees for late payment of bills and in these cases the jobseeker will experience a permanent loss of income.

As discussed below, the compliance system and activity requirements are very complex and the average level of literacy among unemployed people is low. Accelerating the process of imposing suspensions and more severe penalties is akin to raising the speed limit in a busy intersection. More people will inevitably come to harm, even where service providers make every effort to explain the requirements and jobseekers have every intention to meet them.

The Bill would make the system more rather than less complex. It would generally take an hour or so to explain its provisions to highly educated people who are reasonably conversant with social security law, let alone people with less than Year 12 qualifications who are applying for social security for the first time. It is unfortunate that the Bill increases the number of categories of participation failures that attract a payment suspension or penalty, since this is already excessive. In addition to 'connection' and 'reconnection' failures, 'no show no pay' failures and 'serious' failures, the Bill would add another layer of payment suspensions for failure to attend appointments (which may or may not be 'connection' failures).

Some more specific concerns we have with the Bill are that:

- A succession of reconnection requirements (to attend appointments) may be imposed, regardless of whether the person had a reasonable excuse for not complying with the previous requirement;
- Jobseekers can be given less than one day's notice of a reconnection interview (although we understand this was change is proposed to facilitate attendance at interviews in rural and remote areas where jobseekers come to town for one day only, this limitation is not included in the Bill);
- A jobseeker with a reasonable excuse for non-attendance could still be penalised where they did not notify this to the provider or Centrelink in advance, except in 'special circumstances'. 'Special circumstances' implies a narrow range of exceptions. Another outcome of this requirement is a further layer of complexity in the compliance rules. The Government will in effect have to develop a new set of rules to define a 'reasonable excuse for not giving a reasonable excuse'.
- A non-refundable reconnection failure penalty will apply from the date the individual failed to attend the previous appointment and the date they actually attend the reconnection appointment (as distinct from the date they agree to this requirements, which is sooner). To limit this penalty in cases where the jobseeker is willing to comply, JSA providers will be required to schedule these interviews within two working days. However, the penalty applied will vary arbitrarily depending on whether a weekend falls within this 'two working day' period.

### **The problem of non-attendance at appointments and how to resolve it**

We acknowledge that there is a long standing problem with non attendance at interviews, though once jobseekers do engage with service providers they generally meet their activity requirements. For example, only around 20% of Participation Reports are for participation failures other than non-attendance at provider appointments. We understand the Department's figures indicate that attendance rate at Job Services Australia interviews has averaged around 55-60%, which is close to the long term average level in the Job Network era.

If we are to adopt an evidence based approach to this problem, three facts should be recognised.

First, a 100% attendance rate cannot be expected for a number of legitimate reasons. In addition to the reasons mentioned previously, many jobseekers find employment and no longer need income support. The only detailed publicly available data on reasons given for non-attendance, from the Active Participation Agenda evaluation, indicated that 38% of those not attending Job Network interviews had either found a job or stated they were not notified of the interview.<sup>1</sup>

It would be useful to update this jobseeker survey to establish the main reasons that jobseekers give for not attending appointments currently.

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<sup>1</sup> DEEWR 2009, APM evaluation, p27.

Second, the non-attendance rate has been at current levels or higher for many years, including at times when the compliance regime was harsher than it is now – for example when jobseekers automatically lost eight weeks payment on the third instance of non-compliance. This suggests that compliance-based ‘solutions’ to the problem of non attendance are unlikely to work.

Third, our social security and employment services systems expect people who often have low levels of literacy, very limited financial resources and many problems in their lives (for example unstable housing), to attend a large number of appointments over the course of their unemployment.

The APM evaluation found that factors associated with a higher likelihood of non-attendance at Job Network appointments included:

- being Indigenous;
- being under 25 years of age;
- living in less accessible labour markets;
- having less than year 10 education;
- living in a household other than with a partner or spouse; and
- having only ever looked for work, not worked or had unpaid work.

The Compliance Framework Review and latest data on participation failures indices that Indigenous people and young people are still over-represented among those with connection and reconnection failures.<sup>2</sup>

Regular appointments are of course necessary to keep unemployed people engaged with the labour market and identify their training and support needs, but the present social security system is far more complex than it needs to be, too little effort is made to explain the requirements, and too little assistance is often given once unemployed people do engage with Job Services Australia (JSA) providers. This is a major weakness in the system given that less than half of participants in JSA have Year 12 qualifications or their equivalent.<sup>3</sup>

For example, the greater part of the first few Centrelink interviews with a newly unemployed person is taken up administering a survey to assess labour market disadvantage (the Job Seeker Classification Instrument or JSCI) and establishing their eligibility for income support. The JSCI is often administered by phone and its purpose is not always clearly explained, yet jobseekers are expected to disclose personal information such as disabilities, mental health conditions and homelessness at these interviews. This means that vulnerabilities that would make it difficult for people to attend interviews are often not identified.

Jobseekers must attend their first interview with a JSA provider before receiving their first income support payment, which makes it impossible for most to exercise the ‘informed choice of provider’ that is supposed to sit at the heart of a competitive employment services ‘market’. They must quickly come to grips with a very complex compliance regime, which has at least four different categories of ‘participation failure’ (‘connection’, ‘reconnection’, ‘no show no pay’ and

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<sup>2</sup> Disney Buduls & Grant (2010), Independent Review of the Job Seeker Compliance Framework.

<sup>3</sup> DEEWR 2010, Labour market assistance outcomes, September 2010.

‘serious’), each with its own penalties. If they are assessed as a ‘Stream One’ jobseeker, they are unlikely to be interviewed by their JSA provider again for another three months. Although through its new contact regime Centrelink is making efforts to interview jobseekers in a more thorough and intensive way, it is not surprising that many jobseekers do not understand their requirements, and equally importantly, the purpose of the interviews they are expected to attend.

If the system was much simpler, Centrelink and JSA providers had the time to establish a working relationship with each jobseeker, and they received useful advice and assistance when they did attend, it is likely that the attendance rate at these interviews would be much higher, though for reasons described above a 100% attendance rate cannot be expected. In contrast with the 55–60% attendance rate at JSA interviews, we understand that over 80% of jobseekers required to attend ‘Local Connections to Work’ interviews with Centrelink and other service providers do so, even though this program is targeted towards very long term unemployed people and disadvantaged young people whom we would expect to have below-average attendance rates.<sup>4</sup> Likely reasons for this include the positive messages given to jobseekers when they are invited to attend (that the interview’s purpose is to offer assistance, not simply that they will lose income support if they fail to attend) and the efforts made by interviewers to understand their circumstances and mobilise the services each jobseeker needs.

ACOSS supports an ‘employment participation agenda’ that connects income support recipients with sustainable employment. It is disappointing that the main focus of public discussion of these issues has shifted from positive action to help people secure employment towards tougher compliance.

Attendance at interviews should be a gateway towards employment and other opportunities, not just a requirement. The fact that non-attendance rates have been high for a long time, including when penalties were harsher, should prompt policy makers to carefully evaluate whether the present Centrelink and employment service arrangements are meeting the needs of jobseekers and whether the system of referral to appointments is working for people with barriers to participation such as low literacy levels.

A further weakness of the present compliance system is that the compliance ‘net’ is cast too widely. The vast majority of income support recipients do meet their requirements once they are able to engage and to understand what is required of them. The compliance system would be more cost effective and cause less hardship if a risk management approach was adopted to non-compliance. For example, the Compliance Review indicated that about 49,000 job seekers, comprising about 6% of all job seekers, were the subject of three or more Participation Reports (PRs) during 2009–10. Collectively, they accounted for about 52% of all PRs.<sup>5</sup> Centrelink and JSA providers should work together to identify the reasons for repeated non-compliance.

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<sup>4</sup> For details of this program see [www.deewr.gov.au](http://www.deewr.gov.au).

<sup>5</sup> Disney Buduls & Grant (2010), Independent Review of the Job Seeker Compliance Framework, p39.

## The Compliance Framework Review

Rather than increase penalties or bring them forward as proposed in this Bill, ACOSS recommends a 'root and branch' public review of the procedures for informing jobseekers of their requirements, contacting them, and referring them to interviews.

The recently published Compliance Framework Review made a number of recommendations to improve engagement, including the following proposals:

- *A major Simplification Review of all Centrelink's and DEEWR's public documentation and electronic materials relating to the compliance system;*
- *Centrelink should strengthen its processes for ensuring that job seekers understand their obligations and rights in relation to appointments with their provider, and that Vulnerability Indicators (VIs) are applied to appropriate job seekers before referral to a provider;*
- *Centrelink should also seek to ensure that job seekers who may be especially difficult to contact because of homelessness, mental health problems, language difficulties, remoteness etc are urged to designate an appropriate contact person who may be able to help Centrelink and their provider to contact the job seeker;*
- *Where the Job Seeker Classification Instrument (JSCI) is being administered in relation to a job seeker with a Vulnerability Indicator, the JSCI should be administered in person except in narrowly specified circumstances. The JSCI procedures should place greater emphasis on explaining to job seekers that frank disclosure of their circumstances is likely to help Centrelink and providers to provide appropriate assistance.<sup>6</sup>*

These proposals, if implemented, would contribute to improving attendance rates at interviews and identifying those who have significant barriers to participation.

The review also recommended that:

*'If further and significant improvements are not achieved within the next 12 months or so in jobseekers' attendance rates at appointments with providers, 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 had been agreed with the job seeker by Centrelink (for example, as the result of a Contact Request by the provider).'*

The proposed tightening of the compliance regime for non attendance at appointments was announced during the election campaign, before the new compliance had had time to bed down, and before the Review's recommendations were considered. It is not known how many of the recommendations will be agreed to by the Government. It is also noteworthy that the Review recommended that any decision to bring forward penalties for non-attendance should be limited to Stream 1 or 2 jobseekers and to appointments that were clearly 'known' to the jobseeker. The Bill proposes to extend penalties beyond these circumstances.

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<sup>6</sup> Disney Buduls & Grant (2010), Independent Review of the Job Seeker Compliance Framework.

The review also proposed that:

*'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.'*

This is a very important recommendation given the complexity of the compliance system and the fact that a significant number of jobseekers have had their payments suspended for more than a fortnight before re-engagement occurs.

## Recommendations

ACOSS therefore recommends that:

1. The present Bill be rejected.
2. The Government conduct a 'root and branch' public review of the procedures for informing jobseekers of their requirements, contacting them, and referring them to interviews, beginning with a survey of recipients of participation payments on their perceptions of the system and any reasons for non attendance at appointments.
3. A risk-management approach be taken to compliance, so that those who wilfully and repeatedly avoid reasonable activity requirements without a reasonable excuse are penalised rather than those who are vulnerable or simply have difficulty dealing with complex rules and systems:
  - Without increasing administrative burdens or breaching the privacy of job seekers, information could be shared in a more consistent manner between employment service providers and Centrelink on the reasons given by individuals for repeated non-compliance within each six month period, for example illness without medical certificates.
4. The following recommendations of the Compliance Framework Review be implemented as soon as possible by the Government:
  - *A major Simplification Review of all Centrelink's and DEEWR's public documentation and electronic materials relating to the compliance system;*
  - *Centrelink should strengthen its processes for ensuring that job seekers understand their obligations and rights in relation to appointments with their provider, and that Vulnerability Indicators (VIs) are applied to appropriate job seekers before referral to a provider;*
  - *Centrelink should also seek to ensure that job seekers who may be especially difficult to contact because of homelessness, mental health problems, language difficulties, remoteness etc are urged to designate an appropriate contact person who may be able to help Centrelink and their provider to contact the job seeker;*
  - *Where the Job Seeker Classification Instrument (JSCI) is being administered in relation to a job seeker with a Vulnerability Indicator, the JSCI should be administered in person except in narrowly specified circumstances. The JSCI procedures should place greater*

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- emphasis on explaining to job seekers that frank disclosure of their circumstances is likely to help Centrelink and providers to provide appropriate assistance*
- *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.*
5. The Government publicly respond to all of the Review's recommendations as soon as possible.