

# ACOSS update - the Streamlined Participation Requirements and other measures (SPROM) Bill

6 April 2022

## Summary

### ACOSS concerns about the original Bill

This briefing updates ACOSS members on our advocacy on the Streamlined Participation Requirements and Other Measures (SPROM) Bill and our views on the amendments which passed both houses of parliament on 30 March.

When the SPROM bill was first introduced ACOSS had a raft of concerns which informed our ongoing advocacy. These concerns included measures we considered harmful, most notably:

- A delay in start date for payments for people who did not sign a job plan online within 48 hours;
- a lack of protections against excessive requirements for parents and people with disabilities (e.g. to accept a full-time rather than part-time job); and
- a lack of legal protections against risks associated with automation of services (including automated decision-making, privacy and unreliable access to the internet).

### Amendments sought and secured

As a result of direct advocacy, ACOSS secured important new legislated protections for people who use employment services including for the New Employment Services Model (NESM – now called 'Workforce Australia') due to commence on 1 July 2022. These amendments directly address the above concerns we identified with the bill when it was initially tabled in parliament in June 2021, and in the ensuing parliamentary inquiry.

We acknowledge the work of those MPs across the Parliament who advocated to secure these beneficial changes to the Bill.

The amendments include:

1. The removal of the proposed delay and reduction in people's first income support payment in (Schedule 8)
2. An important legislative requirement for Workforce Australia to be reviewed after 2 years. The extent of the review is broad and as the wording of the amendment shows the review will also include evaluation of mutual obligation requirements.
3. Protections to remove payment suspensions and other penalties for the first month of people's transition from jobactive to the NESM.

4. A digital protections framework for people using the new employment services, including the online ('digital') services. This must be spelt out in a legislative instrument under the following headings advocated by ACOSS:
  - natural justice;
  - human rights protections;
  - transparency and freedom from bias;
  - privacy;
  - accessibility of technological processes.
5. New clauses in the Social Security Administration Act, that will mean principal carers (mainly single parents) and persons with a partial capacity to work (people with disability) will not be subject to compliance action for refusing or leaving a job that is more than 15 hours per week.

This change legislates for the first-time existing protections that are in the Social Security Guide.

The full details of the amendments and how they address ACOSS's concerns is provided in Appendix 1.

### **Rationale for ACOSS position on the Bill**

ACOSS holds grave concerns about the system of mutual obligations and payment penalties impacting people on unemployment payments, which cause widespread hardship and anxiety for people who may not have any other source of income.

The original Bill mainly codified existing mutual obligations, rather than introducing new ones or providing a legislative basis for the New Employment Services Model commencing in July 2022 (the new employment services were already authorised and funded under other legislation).

We view the changes introduced to this Bill as a first step in necessary reforms to mutual obligations, compliance systems and penalties. Beyond these changes, we shall urge the next Government to end damaging aspects of the mutual obligation regime. The legislated review of the system provides an opportunity for advocacy by ACOSS, our members, and people directly affected.

ACOSS understood that the commencement of the New Employment Services Model in July this year would be disrupted in ways that would be detrimental for people using employment services if provisions of the Bill allowing people to register their Employment Plans online were not legislated in advance of the transition. In our view, being able to manage Job Plans in an online system is beneficial for many people who have good internet access and don't need a more intensive employment service. They will not need to engage with an employment services provider and attend regular appointments.

In addition, the Government amended the Bill in response to major concerns we and others raised. For example, the payment delay proposed in Schedule 8 was removed.

It is important to note that passage of the Bill did not determine whether the transition to the New Employment Services model would proceed in July. Rather, the amended Bill allows people to register their Employment Plans online and provides some additional protections for people against unreasonable requirements, and risks associated with automation of services and the transition to the new system. ACOSS's view is that on

balance, the amended Bill improves protections for people required to use employment services.

Importantly, the Digital Protections Framework that will be legislated should help shield people from risks associated with automation of employment services (including 'Robodebt' situations). This is a first for users of online government services in Australia.

Further, since there will now be a review of the New Employment Services within 2 years of commencement, we expect that issues relating to the implementation of the model, including online services, will be addressed in a more timely manner than in the past.

In any event, the next Government does not have to wait for the outcome of that review to make urgent, overdue changes to the mutual obligations and penalty regime.

Finally, the advocacy we undertook resulted in the 'baking in' of provisions that protect people with partial capacity to work and principal carer parents from being required to undertake paid work of more than 15 hours per week if they do not wish to do so.

# Background

During the process of advocating for amendments to the Bill, ACOSS outlined our position as it was being developed to members. The following section consolidates these background documents and the stance we adopted as we sought amendments.

## **1. Purpose of the Streamlined Participation Requirements and Other Measures Bill**

The [Streamlined Participation Requirements and Other Measures Bill](#) consolidates legislation for existing activity requirements for people on unemployment payments.

The Bill also facilitates the introduction of some technical aspects of online (digital) employment services as part of the New Employment Services System commencing in July 2022:

- Schedule 1 enables people to draft and amend their Employment Plan (job search and other requirements) online without meeting with employment service providers or discussing this with the Digital Contact Centre support line.
- Schedule 3 provides the Department of Employment with discretion not to suspend payments when someone has not reported the fulfilment of an Employment Plan requirement.
- Without prescribing in detail how online services would work, the Bill allows for people to commence online services in the new system from July, by managing their Job Plans online, and thus avoids disruption in the transition to the new system.

To allow a smooth transition to the new employment services system in July 2022, ACOSS supported these beneficial provisions that allow people to prepare their Job Plans online, provided the government committed to a Digital Protections Framework for employment services.

The original Bill as proposed by the Government did not remove the most punitive elements of the system, nor did it impose new requirements and penalties for people who are unemployed. For the most part, it simply consolidated the existing law on mutual obligations. It contained a combination of positive changes that potentially give people more control over their Employment Plans, and negative ones that reduced their income support.

ACOSS strongly opposed the negative elements.

## 2. ACOSS Position on Mutual Obligations and penalties

ACOSS holds grave concerns about the system of mutual obligations and payment penalties impacting people on unemployment payments, which cause widespread hardship and anxiety for people who have no other source of income. For example, we oppose excessive job search requirements, automated suspensions of social security payments for breaches of activity requirements, and compulsory participation in Work for the Dole.

Above and beyond the changes legislated in this Bill, we will urge the next Government to end damaging aspects of the mutual obligation regime. The legislated review of the system provides an opportunity for advocacy by ACOSS, our members, and people directly affected.

## 3. Our concerns about the original Bill

### Concerns raised by ACOSS

Our concerns and proposed amendments included the following:

- We sought amendments to Schedule 1 to incorporate into the Social Security Act protections for single parents and people with disability from any requirement to seek paid employment exceeding 15 hours a week (30 hours a fortnight).
- We opposed the proposed delay in people's first income support payment (Schedule 8). This Schedule introduced payment delays for people using digital employment services if they did not promptly sign their job plans online. This part of the bill would have resulted in a \$186m saving to government (over 4 years) that would have been drawn from payments for people claiming unemployment benefits.
- We sought legislative protections for people so that they are not financially disadvantaged by their transition into the new employment services if they are unable to meet new requirements. This includes being unable to agree to Employment Plans online or comply with the new Points Based Activation System.

In particular, we proposed that payment suspensions and other penalties (including accrual of 'demerit points') be waived for at least a month following a person's transfer to the New Employment Services system from the existing system.

- We sought a legislated code of digital protections for people using the new employment services, including but not limited to the online ("digital") services. These would maximise the benefits of digital technology, while protecting people on unemployment payments from potential harms including automated decision-making (e.g. 'Robodebt' situations), loss of privacy and lack of transparency on how decisions are made and services are provided.

- We opposed Schedule 6, which extends existing exemptions from workplace relations law (including minimum rates of pay) for programs such as Work for the Dole and Youth Path internships to other 'employment programs' as determined by the Employment Secretary.

As a general principle, we do not believe that people should be required to undertake unpaid, or partially paid, work experience programs while on income support, without access to important workplace rights. The existing exemptions for the Work for the Dole and other programs already undermine those protections. While the Government argued that new unpaid work experience programs would by their nature be exempt from workplace relations laws, we argued that, at the least, any explicit extension of such exemptions should have to be legislated on a case-by-case basis. There was no agreement on this issue.

#### 4. What the Bill *doesn't* do

There was some confusion about what the original SPROM bill enabled in relation to the implementation of the New Employment Services Model (NESM). The original SPROM Bill did not authorise other major aspects of the new model, including the commissioning of employment services under the recently completed tender. Nor did it authorise the use of computers to make decisions about social security payment rates, suspensions or penalties – that was already legislated in a different Section of the Social Security (Administration) Act.

Further the powers to introduce new measures such as the requirements for the new 'Points-Based Activation System' are already available to the Secretary of Employment.

The bill does not:

- spell out how online employment services will be provided;
- spell out how the New Employment Services will be commissioned, or how people's needs for support will be assessed;
- enable or extend the existing powers of Governments to use computers to make decisions about payment rates, suspensions or penalties. That power is already provided in Social Security legislation.
- substantially alter the Targeted Compliance Framework under which payments are suspended when people don't meet requirements, and which imposes harsher financial penalties when multiple demerit points have accrued;
- enable the Points-Based Activation System (PBAS) to go ahead. The PBAS has been in operation in the New Employment Services trial areas for over two years, so the legislation as it currently stands already allows for this.
- change the legal basis of *existing* unpaid work experience programs like Work for the Dole and internships (see note above on our concerns with Schedule 6).

## Appendix 1 – ACOSS proposals and text of amendments

The following table shows what ACOSS sought, and how this is reflected in the amendments to the bill.

ACOSS proposals	Text of amendment
<p>Amendments to Schedule 1 to incorporate into the Social Security Act protections for single parents and people with disability from any requirement to seek paid employment exceeding 15 hours a week (30 hours a fortnight).</p> <p>This was met by inserting new clauses in the Social Security Administration Act, that will mean principal carers or persons with a partial capacity to work will not be subject to compliance action for refusing or leaving a job that is more than 30 hours per week, but may choose to undertake such work.</p> <p>This change extended existing protections that were not legislated but were in the Social Security Guide.</p>	<p><b>[principal carers or persons with a partial capacity to work]</b></p> <p>(8) Schedule 1, page 46 (after line 28), after item 127, insert:</p> <p><b>127A After subsection 42AC(1)</b></p> <p>Insert:</p> <p>(1A) However, a person does not commit a <i>mutual obligation failure</i> in relation to the person’s failure to:</p> <ul style="list-style-type: none"> <li>accept an offer of paid work in Australia of more than 15 hours per week; or</li> <li>undertake paid work in Australia of more than 15 hours per week;</li> </ul> <p style="padding-left: 40px;">if the person is the principal carer of at least one child or has a partial capacity to work.</p> <p>Note 1: For <i>principal carer</i> see subsections 5(15) to (24) of the 1991 Act.</p> <p>Note 2: For <i>partial capacity to work</i> see section 16B of the 1991 Act.</p> <p><b>[principal carers or persons with a partial capacity to work]</b></p> <p>(9) Schedule 1, page 46 (before line 29), before item 128, insert:</p> <p><b>127B Section 42AD</b></p> <p>Before “A”, insert “(1)”.</p> <p><b>[principal carers or persons with a partial capacity to work]</b></p> <p>(10) Schedule 1, page 47 (after line 6), after item 130, insert:</p> <p><b>130A At the end of section 42AD</b></p> <p>Add:</p> <p>(2) However, a person does not commit a <i>work refusal failure</i> if:</p> <ul style="list-style-type: none"> <li>the person is the principal carer of at least one child or has a partial capacity to work; and</li> <li>the person refuses or fails to accept an offer of paid work in Australia that is more than 15 hours per week.</li> </ul>

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

***[principal carers or persons with a partial capacity to work]***

(11) Schedule 1, page 47 (before line 7), before item 131, insert:

**130B At the end of section 42AE**

Add:

(4) A person also does not commit an *unemployment failure* if: the person is the principal carer of at least one child or has a partial capacity to work; and the work in relation to which the person became unemployed was work of more than 15 hours per week.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

***[principal carers or persons with a partial capacity to work]***

**140A At the end of section 42N**

Add:

(3) Despite subsection (1), the Secretary must not determine that a person commits a serious failure under that subsection if: the person is the principal carer of at least one child or has a partial capacity to work; and the person refuses or fails to accept an offer of paid work in Australia that is more than 15 hours per week.

Note 1: For *principal carer* see subsections 5(15) to (24) of the 1991 Act.

Note 2: For *partial capacity to work* see section 16B of the 1991 Act.

***[principal carers or persons with a partial capacity to work]***

(14) Schedule 1, page 48 (before line 12), before item 141, insert:

**140B After subsection 42S(2)**

Insert:

(2A) Despite subsection (1), the Secretary must not make a determination under that subsection in relation to a person if: the person is the principal carer of at least one child or has a partial capacity to work; and the work in relation to which the person became unemployed was work of more than 15 hours per week.



	<p>Note 1: For <i>principal carer</i> see subsections 5(15) to (24) of the 1991 Act.</p> <p>Note 2: For <i>partial capacity to work</i> see section 16B of the 1991 Act.</p> <p><b>[principal carers or persons with a partial capacity to work]</b></p> <p>(22) Schedule 8, page 75 (line 1) to page 78 (line 14), omit the Schedule. <b>[removal of start day rules]</b></p> <p>(23) Schedule 10, page 82 (lines 1 to 7), omit the Schedule. <b>[removal of start day rules]</b></p>
<p>The removal of the proposed delay in people’s first income support payment for people using ‘digital’ employment services in (Schedule 1 and 8)</p> <p>The amendments to this part of the bill show how the start day rules were removed from Schedule 1 and 8 of the bill</p>	<p>(15) Schedule 1, item 142, page 48 (lines 14 and 15), omit the item. <b>[removal of start day rules]</b></p> <p>(16) Schedule 1, items 150 and 151, page 49 (line 27) to page 50 (line 8), omit the items. <b>[removal of start day rules]</b></p> <p>(17) Schedule 1, item 153, page 52 (lines 19 to 32), omit the item. <b>[removal of start day rules]</b></p> <p>(18) Schedule 1, item 158, page 58 (after line 20), after subitem (2), insert:</p> <p>(19) Schedule 1, item 158, page 58 (after line 33), after subitem (5), insert: <b>[]</b></p> <p>(20) Schedule 1, item 158, page 60 (after line 4), after subitem (13), insert:</p> <p>Schedule 8, page 75 (line 1) to page 78 (line 14), omit the Schedule. <b>[removal of start day rules]</b></p> <p>Schedule 10, page 82 (lines 1 to 7), omit the Schedule. <b>[removal of start day rules]</b></p>

<p>A review of Workforce Australia within 24 months of commencement</p> <p>This is important as there was no existing requirement for Workforce Australia to be reviewed. The extent of the review is broad and as the wording of the amendment shows will include mutual obligation requirements and penalties.</p>	<p>(21) Schedule 1, page 60 (after line 28), after item 159, insert:</p> <p><b>159A Review of Workforce Australia, digital protections framework for employment services programs and safeguards for transition to Workforce Australia</b></p> <p><i>Review of Workforce Australia</i></p> <p>The Employment Secretary must cause a comprehensive review to be conducted of the effectiveness of the program established by the Commonwealth and known as Workforce Australia in achieving its objectives. In particular, the review must cover the following:</p> <p>the effects of activity requirements, compliance and penalties on recipients of participation payments and on employment outcomes;</p> <p>the effects of digital services and enhanced services on recipients of participation payments, employers and employment outcomes.</p> <p>The Employment Secretary must cause the review to be completed before the second anniversary of the establishment of that program.</p> <p>The persons who conduct the review must give jobseekers, employers, employment services providers and relevant experts the opportunity to provide input in relation to the review.</p> <p>The persons who conduct the review must give the Employment Secretary and the Employment Minister a written report of the review.</p> <p>The Employment Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Employment Minister.</p> <p>The persons who conduct the review must publish the report on the internet as soon as practicable after that tabling.</p>
<p>A legislated Digital Protections Framework for people using the new employment services, including the online (“digital”) services</p> <p>The Secretary must incorporate into a Legislative Instrument</p>	<p><i>Digital protections framework for employment services programs</i></p> <p>The Employment Secretary must, by legislative instrument, determine a digital protections framework for employment services programs established by the Commonwealth.</p> <p>Without limiting subitem (7), the framework must deal with the following:</p> <ul style="list-style-type: none"> <li>• natural justice;</li> <li>• human rights protections;</li> <li>• transparency and freedom from bias;</li> </ul>

<p>a set of digital protections following a framework developed by ACOSS (see Attachment 2).</p>	<ul style="list-style-type: none"> <li>• privacy;</li> <li>• accessibility of technological processes.</li> </ul> <p>The Employment Secretary’s use of technological processes in relation to the following must comply with the framework: persons entering into employment pathway plans under Division 2A of Part 3 of the <i>Social Security (Administration) Act 1999</i>;</p> <ul style="list-style-type: none"> <li>• the variation of those employment pathway plans;</li> <li>• the cancellation of those employment pathway plans;</li> <li>• the monitoring and reporting of compliance with those employment pathway plans;</li> <li>• the consequences that arise as a result of non-compliance with those employment pathway plans.</li> </ul> <p>arrangements made by the Employment Secretary.</p> <p><b><i>[review of Workforce Australia, digital protections framework and safeguards]</i></b></p>
<p>Legislative protections for people so that they are not financially disadvantaged by their transition from jobactive into the new employment services if they are unable to meet new requirements. This includes being unable to agree to Employment Plans online or comply with the new Points Based Activation System. No payment suspensions or other penalties will apply for the first month after people transition to the new system.</p>	<p><b><i>Safeguards—transition to Workforce Australia</i></b></p> <p>The Employment Secretary must make arrangements to ensure that a person is not subject to financial penalties or otherwise disadvantaged because of mutual obligation failures covered by paragraph 42AC(1)(e) or (f) of the <i>Social Security (Administration) Act 1999</i> that are committed in the period of 1 month beginning on the day the person transitions to the program established by the Commonwealth and known as Workforce Australia, where the transition occurs before the end of 30 September 2022</p>

## Attachment 2 - Principles to underpin a Code of Ethics and Protections for Digital Employment Services

The following Digital Protection Principles were proposed by ACOSS in our discussions with the Government and other Parties.

### 1. Natural justice

Where a decision impacting a person's participation payment is made by the operation of a computer program pursuant to an Employment Plan, natural justice principles should apply including that the person affected is:

- notified of such a decision as soon as practicable;
- able to contact the decision-maker delegated to make the decision pursuant to Social Security law; and
- is notified of the relevant processes to review or appeal the decision; before such a decision takes effect.

Decisions relating to an employment pathway plan that adversely affect an income support payment must not be made by the operation of a computer program.

### 2. Human rights protections

The digitised systems need to be built in a way that puts human rights protections at the centre of design. For further, see UN Special Rapporteur on Extreme Poverty and Human Rights: *Digital Technologies, Social Protection and Human Rights*, Special Report (October 2019). See also, Australian Human Rights Commission: Human Rights and Technology Report (2021) at <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-technology-final-report-2021#:~:text=Edward%20Santow%2C%20Australian%20Human%20Rights,while%20upholding%20our%20human%20rights..>

### 3. Transparency and freedom from bias

The algorithms of such computer program must be published and free of bias.

#### 4. Privacy

The personal information of a person that has entered into an Employment Plan must be protected (consistent with the *Privacy Act 1988*);

The privacy of a person must be protected (consistent with the *Privacy Act 1988*) when monitoring compliance with an Employment Plan.

### 5. Accessibility

Where technological processes are used in relation to an Employment Plan, all reasonable steps should be taken to ensure that:

- (i) the person has the skills and knowledge to use the technology required to comply with the plan; and
- (ii) has affordable access to the technology required to comply with the plan.

## **Further background on the New Employment Services Model**

[I Want to Work report](#)

[ACOSS Submission: Point-Based Activation in the New Employment Services](#)

[201208 ACOSS submission – new employment service payment model](#)

[ACOSS submission employment service licensing](#)

[ACOSS submission on the NESM Exposure Draft](#)

[ACOSS Submission on the SPROM Bill](#)

[ACOSS Submission on Future Employment Services](#)