



Australian
Council of
Social Service

ACOSS Submission | July 2010

**Submission to the Independent review of the job seeker compliance
framework**

July 2010

Executive summary

This submission gives our assessment of the new activity test compliance and penalty regime for recipients of Newstart Allowance, Youth Allowance and Parenting Payment that was introduced in July 2009 and recommendations to improve it.

The new system changed the previous compliance regime in the following ways:

- More discretion was given to employment service providers and Centrelink whether to apply 'participation failures' (breaches) and penalties, including a 'comprehensive compliance assessment' by Centrelink prior to the imposition of any eight week no-payment penalty. This replaced the previous 'three strikes' rule that led automatically to eight week penalties in many cases.
- A new system of 'No Show No Pay' penalties was introduced for non-participation in activities such as work experience or training, so that a day's payment is deducted for each day of non-participation.
- Previous rules allowing people affected by eight week no-payment periods to engage in unpaid work experience ('compliance activity') in lieu of a financial penalty were formalised and extended.

The new system aimed to encourage timely re-engagement of unemployed people with employment services and Centrelink instead of relying excessively on the threat of the loss of eight weeks of income support up to a year after a participation failure occurs.

Problems with the previous compliance system

The old compliance that was in place from July 2006 to July 2009 failed to improve compliance with activity requirements despite depriving a growing number of people of income support for eight weeks. From 2005-06 to 2008-09, the number of participation failures applied rose from 132,000 to 167,000 (after having peaked at 228,000 in 2007-08). The number of eight week no-payment penalties doubled from 16,000 in 2006-07 to 32,000 in 2007-08. The system created a vicious cycle of more penalties and less compliance. People became homeless as a result of the penalties they received.

Its key flaws were that penalties were often imposed many months after the breach of requirements (so they had limited impact on behaviour), and that decision makers had limited discretion not to impose penalties where the job seeker was vulnerable or was willing to re-engage. Instead, a simplistic 'three strikes and you're out' approach was applied, after which job seekers lost their income support for eight weeks.

Overall assessment of the new compliance system

The new compliance system is a major improvement on its predecessor as it appears to have achieved better compliance while imposing fewer of the harshest financial penalties, while giving Centrelink and providers more opportunities to respond to individual circumstances.

The new system appears to have substantially reduced both the number of participation failures applied and the number of eight week no-payment periods. Comparing the equivalent three quarters of the previous system (July 2008 to March 2009) with the first three quarters of the new one (July 2009 to March 2010), the number of participation

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failures applied fell from 129,000 to 82,000 and the number of eight week no-payment penalties fell from 14,793 to 7,257.

Significantly, the overall number of penalties did not fall. The new system imposed 21,000 financial penalties compared with 19,000 in the equivalent three quarters of the previous system. The difference was that the new system imposed a larger number of smaller up-front penalties (including 11,000 of the new No Show No Pay penalties), rather than waiting for up to a year to impose harsher eight week no-payment penalties.

Nevertheless the new system has a number of serious weaknesses:

- The system is still failing young people and Indigenous people, especially males. Overall, 70% of participation failures are attributed to young people under 30 (who are just 44% of unemployment payment recipients) and 16% to Indigenous people. Centrelink and Job Services Australia providers simply lack the resources to provide meaningful guidance to many young people and Indigenous people in their efforts to find work, leaving them to rely excessively on the threat of penalties to keep them engaged with the system.
- The eight week no-payment penalty is too harsh and should be substantially reduced. Given that most income support recipients struggle to survive from one fortnightly payment to the next, it is unlikely that a lesser penalty would have less impact on behaviour.
- The threshold in the legislation for an eight week no-payment penalty – three participation failures within six months – can be reached when an unemployed person fails to attend an activity such as work experience for three successive days. This is because a fresh 'no show no pay failure' is applied for each day of non-participation. To impose the maximum penalty in these circumstances is too harsh.
- The system is too complex, with four different categories of 'participation failure', each with its own system of financial penalties. Those administering the system have difficulty understand it, let alone the unemployed people who have to comply with it.
- There are ongoing inconsistencies in approach between employment service providers and Centrelink which have led to high rejection rates of the provider's participation reports. This was also a problem in the previous system. While the agency with responsibility for social security payments should maintain oversight of the compliance system, there is a need for better and more timely communication between Centrelink and employment service providers, and for DEEWR to assist providers to strengthen their capacity in administrative law.
- The system still penalises people who are vulnerable or don't understand procedures, rather than focusing on those who wilfully and consistently avoid activity requirements. A risk management approach may help ensure that as far as possible only the latter group is targeted.
- The legislation for the new compliance framework is silent on crucial details such as the conduct of comprehensive compliance assessments and the 'clean-slating' of previous participation failures after these assessments.

Recommendations

R1. The Government should consult with relevant stakeholders to develop specific strategies to improve engagement of Indigenous people and young people with Centrelink and employment service providers.

R2. The core elements of the present framework should be retained, including its emphasis on early intervention and re-engagement, Centrelink's discretion in applying participation failures and penalties, giving job seekers reasonable notice of reductions or suspension of payments, comprehensive compliance assessments, the 'reasonable excuse' rules, access to the review and appeal system, payment pending review and appeal, and the capacity of job seekers to 'work off' financial penalties.

R3.

(1) For the purpose of determining whether participation failure has been persistent, failure to attend an activity for two or more days in succession within a given pay period should count as a single failure.

(2) A compliance assessment should still be triggered, and current penalties should be capped, once the number of days payments lost reaches three within a six month period.

R4. The eight week no-payment period should be substantially reduced.

R5. To improve consistency between provider and Centrelink decisions and reduce wastage of resources:

(1) Centrelink should be required to provide timely feedback to employment service providers on the reasons for decisions not to apply participation failures;

(2) Formal mechanisms should be established for regular interchange between Centrelink and providers to iron out any problems or inconsistencies in approach between it and providers;

(3) Consideration should be given to preparing a single set of compliance policy guidelines for both Centrelink and providers, which would be publicly available;

(4) Consideration should be given to the development of national training materials and courses for employment consultants in the principles of administrative law.

R6. The compliance framework should be simplified by:

(1) Reducing the number of separate categories of participation failure, for example by combining connection, reconnection, and no show no pay failures into a single system;

(2) Aside from serious failures, the simplified system could be based on progression from a warning, to payment suspension (with reimbursement on compliance), to loss of a day's payment where appropriate;

(3) Applying more consistent penalties for participation failures, including a consistent method of calculation of a 'day's payment', and extending access to the 'compliance activity' provisions to those penalised for 'serious failures'.

R7. The new framework should be more explicitly and clearly outlined in the legislation, including the role and process of comprehensive compliance assessments and the 'clean-slatting' of previous participation failures following these assessments.

R8. Compliance with a requirement to participate in an accredited training program should be based on reporting by the training provider and the requirements of each course, rather than a blanket requirement to attend all classes or the job seeker's

performance in tests or examinations. Information should be given to training providers to explain the compliance system and reporting requirements.

R9. Greater emphasis should be placed on risk management, so that those who wilfully and repeatedly avoid reasonable activity requirements without a reasonable excuse are penalised, and not those who are vulnerable or have difficulty dealing with complex rules and systems:

(1) Without increasing administrative burdens or breaching the privacy of job seekers, information could be shared in a 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.

(2) With the permission of the job seeker, information regarding personal vulnerabilities could also be shared in a more consistent fashion. Care should be taken with regard to sensitive medical information and risks of domestic or other violence, and providers should have protocols in place to deal with this information (especially with regard to respect for privacy, security of records, and training of staff).

(3) Consideration could be given to encouraging providers to attend comprehensive compliance assessments where there are no specific indications of vulnerability or conflict between the job seeker and the employment consultant.

R10. The compliance data should be enhanced by quarterly reporting of the following information:

- *The distribution of no show no pay penalties according to the number of continuous days they are imposed (from one to three days in a given pay period).*
- *The same distribution for reconnection penalties (from one to six days).*
- *The number of participation failures submitted by employment service providers and their outcomes.*
- *The number of eight week no payment periods that are reduced in full or in part by participation in a compliance activity.*
- *The number of hardship exemptions from eight week no-payment periods.*
- *The distribution of participation failures and penalties by Centrelink area.*
- *The number of participation failures and penalties applied to unemployed people with a 'vulnerability flag' on their electronic file.*
- *The number of appeals lodged regarding penalties, and their outcomes at each level of the appeals system.*

1. The purpose of unemployment payment compliance systems

Activity requirements are a necessary part of a fair and effective social security system. However the challenge in designing the compliance system is to prevent a small minority of recipients from avoiding activity requirements without causing stress and financial hardship for a larger group of vulnerable people who simply have problems in dealing with complex rules and procedures.

Striking the right balance has become more difficult as the unemployment rate has fallen. Those who are out of work at a time of low unemployment are more disadvantaged in the labour market, yet there is a greater expectation in the community that unemployed people can find work quickly.

Among recipients of Intensive Support Customised Assistance within the Job Network (which was targeted to long term unemployment payment recipients):

- 61 per cent lacked Year 12 qualifications or equivalent, compared to 33 per cent of people of working age generally;
- 20 per cent reported that their main barrier to work was a disability, and 15 per cent reported that they were 'too old';
- 35 per cent of long term Newstart Allowance recipients, 45 per cent of Parenting Payment and 30 per cent of Disability Support Pensioners are estimated to have mental health disorders, mainly anxiety and depression.¹

The design of a compliance system is not simply a choice between 'harsh' or 'lenient' policies. Its purpose should be to engage job seekers with the labour market, not to punish breaches of activity requirements after the event. From this perspective, a large number of penalties imposed is a sign of policy failure, not 'toughness'. If the Government can get the administration of activity requirements right, it should be possible to improve compliance and reduce the number of penalties imposed at the same time.

Activity requirements and penalties should be based on the following principles:

- (1) The requirements should be reasonable and relevant to each individual's pathway to employment and take account of their work capacities, barriers and vulnerabilities;
- (2) Service providers (including Centrelink and employment service providers) should work in partnership with each job seeker to carefully assess their individual circumstances and offer the resources required to assist them into employment;
- (3) Job seekers and providers should be able to understand the system and to comply with it;
- (4) The compliance system should aim to engage job seekers with the labour market rather than to punish breaches of activity requirements after the event;
- (5) Natural justice and consistency of treatment of people in similar circumstances should apply;
- (6) Penalties should be used as a last resort and should not unreasonably place people in financial hardship.

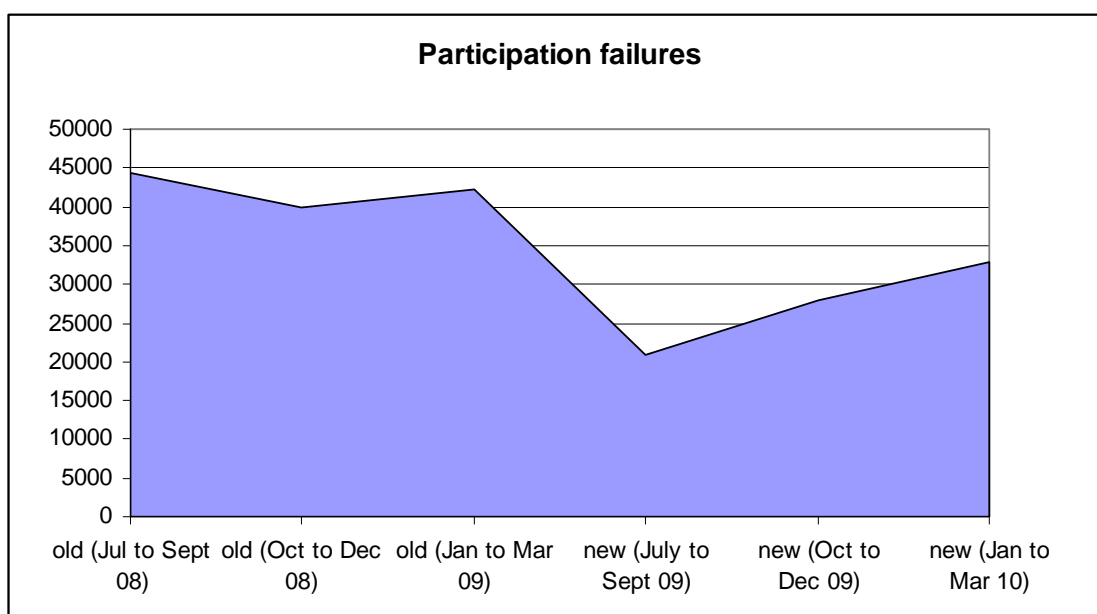
¹ Butterworth et al (2006), Hopelessness demoralisation and suicidal behaviour, the backdrop to welfare reform in Australia. *Australia and New Zealand Journal of Psychiatry* 2006: 40; DEEWR (2008a), The APM evaluation, Department of Education, Employment and Workplace Relations, Canberra; OECD (2007a), Education at a glance, Organisation for Economic Cooperation and Development, Paris

2. Outcomes of the previous and new compliance regimes

The new system appears to have substantially reduced both the number of participation failures applied and the number of eight week no-payment periods. Comparing the equivalent three quarters of the previous system (July 2008 to March 2009) with the first three quarters of the new one (July 2009 to March 2010), the number of participation failures applied fell from 129,000 to 82,000. However the overall number of penalties imposed rose from 19,000 to 21,000 mainly due to the new no show no pay penalties.²

Participation failures

Although the reduction in participation failures in the first three quarters is partly due to the large drop in the first quarter of the new Job Services Australia system (September quarter 2009, when the providers and job seekers were 'settling in' to the new system), the number of participation failures applied remained lower than in the previous compliance regime over the following two months (see graph below).



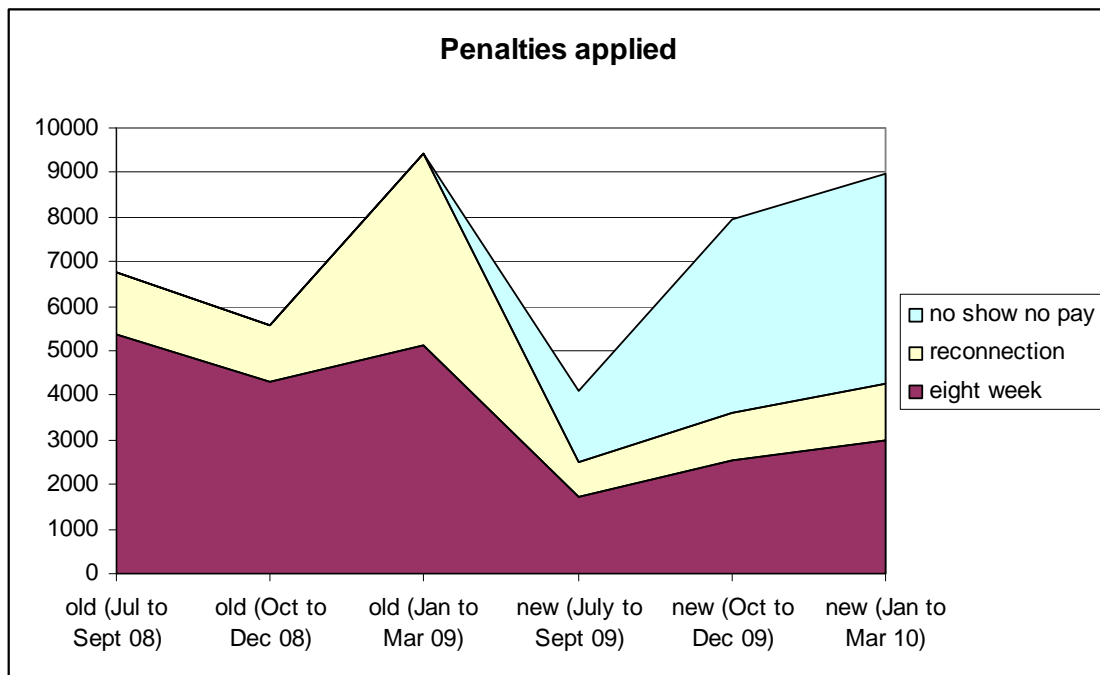
Source: DEEWR compliance data base

No data have been provided on the number of participation reports submitted by providers or the proportion of these rejected by Centrelink. As in the previous regime, Centrelink has discretion to do this, for example on the grounds that the reasons for the alleged failure were not clearly outlined in the report. We understand the proportion of participation reports rejected has fluctuated between around 50-75% during the course of both the previous and current regimes. It is not yet clear whether the new scheme has increased or reduced the rejection rate overall.

² Note the caveats on interpreting these data in the last section of this submission.

Penalties

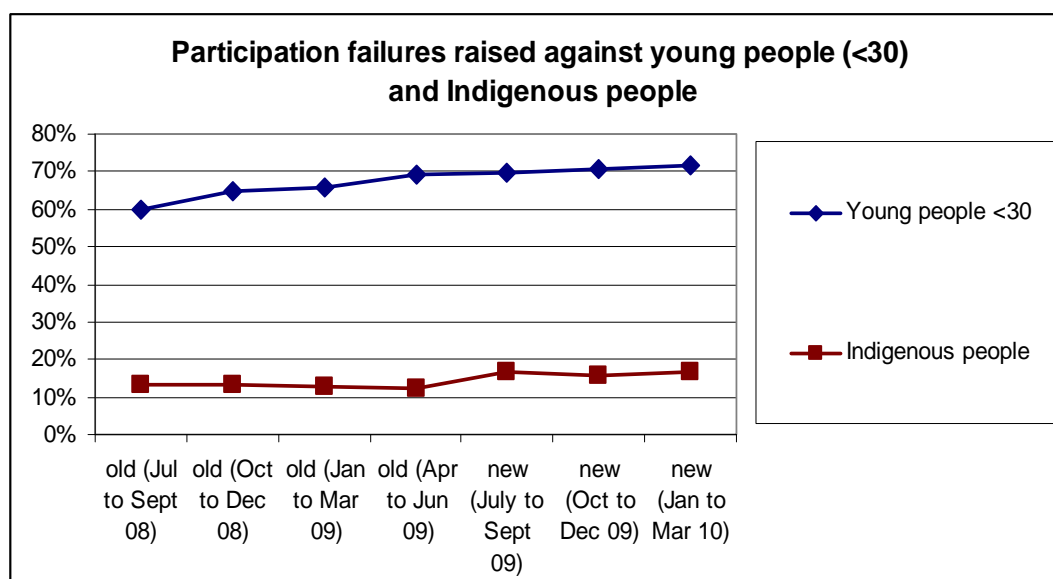
The number of eight week no-payment penalties also fell in the first three quarters of the new regime, from a total of 14,793 to 7,257. Significantly, the overall number of penalties did not fall substantially. The new system imposed 21,000 financial penalties compared with 19,000 in the equivalent period under the previous system. The difference is that the new system imposed a larger number of smaller up-front penalties shortly after the breach (including 11,000 of the new No Show No Pay penalties), rather than waiting for up to a year to impose eight week no-payment penalties (see graph below).



Source: DEEWR compliance data base

Indigenous people and young people

The overrepresentation of Indigenous people and young people among those with participation failures remains a major concern. This problem is worsening, with higher proportions of participation failures attributed to young people and Indigenous people under the new system. Since about three quarters of those with participation failures are male, this suggests that the system is still failing to engage young and Indigenous males.



The proportion of participation failures attributed to Indigenous people averaged around 13% in the previous regime, and rose to around 16% over the first three quarters of the new one. The proportion of penalties (including eight week penalties) applied to Indigenous people has also risen over each of the first three quarters of the new regime. No data are publicly available on the proportion of Newstart and Youth Allowance recipients of Indigenous background, but it is likely to be less than 16%.

The proportion of participation failures attributed to people under 30 years averaged around 64% in the old regime and rose to around 70% in the first three quarters of the new regime. Only 44% of all Newstart and Youth Allowance recipients are under 30 years old.

R1. The Government should consult with relevant stakeholders to develop specific strategies to improve engagement of Indigenous people and young people with Centrelink and employment service providers.

Non-attendance at provider interviews

It is noteworthy that three quarters (75%) of participation failures raised so far under the new system are for non-attendance at employment service provider interviews. This is likely to be broadly unchanged from the previous regime. This sends a clear message: that unemployed people are very likely to comply with activity requirements once they are engaged with a provider, but that the biggest challenge is to ensure attendance at provider interviews, especially the first.

Levels of attendance at provider interviews have varied substantially over the past decade. These variations are likely to reflect system changes rather than sudden changes in the willingness of unemployment people to participate. For example, in the early 2000s unemployed people had to re-engage repeatedly with different Job Network and Work for the Dole providers over the course of their unemployment. This greatly increased the risk of disengagement. In response to this problem the system was streamlined from 2003 so that job seekers generally remained with the same provider. At

one stage, job seekers were notified about their first interview with a new provider (for example, Work for the Dole) by letter instead of a direct referral from Centrelink. The number of 'no shows' at interviews rose dramatically at this time, prompting a political response that income support recipients were avoiding work on a large scale. However, as soon as direct referral from Centrelink was restored attendance improved dramatically.

It is likely that if Centrelink provided employment services directly the levels of non attendance at employment assistance interviews would fall substantially, since no 'referral' to employment assistance would be needed. However, Australian Governments contract out employment services on the grounds that employment assistance provided directly by the Government bureaucracy responsible for income support would not be as flexible and responsive to jobseeker needs. There is merit in this argument and ACOSS broadly supports a well designed system of Government-contracted employment assistance (see comments in the next section of this submission).

This argument is more likely to hold where providers are adequately resourced, have sufficient discretion over service delivery, and where job seekers need more than a basic 'self service' model of employment assistance. However, there is a widespread view among providers and advocates that the Job Services Australia funding model offers scant resources to providers to assist Stream 1 job seekers, who form a substantial proportion of unemployed people referred to employment services for the first time. The 'work experience phase' of Job Services Australia services for long term unemployed people is also severely under-resourced.

The best way to encourage job seekers to engage and stay engaged is to offer a high quality, individually tailored service. If providers are only funded to interview people once every two months or so, and given an average of \$11 (for Stream 1 jobseekers) or \$500 (for Work Experience) to invest in overcoming barriers to work, it is difficult for them to offer a quality service to these jobseekers unless they cross-subsidise from other funds.

Of particular concern to ACOSS is the quality and intensity of services available to Work Experience participants, who are among the most disadvantaged job seekers in the Job Services Australia system since most long term unemployed people fall within this category. Their number can be expected to grow substantially as long term unemployment rises off the back of the Global Financial Crisis. If compulsory work experience or training for unemployed people in the Work Experience phased is not well tailored to individual needs, then there is a risk that 'no show no pay' penalties will escalate over the next two years.

While beyond the scope of this review, this is a reminder that the effectiveness of any compliance system depends greatly on the processes for referral to employment assistance, and the quality and intensity of the services they receive.

3. The core elements of the new system

The core elements of the new system that are likely to have improved compliance and reduced the incidence of the harshest penalties include its emphasis on early intervention and re-engagement and the comprehensive compliance assessments. The

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compliance data indicate that the latter have played a key role in re-directing people to more appropriate services, for example through the Job Capacity and Job Seeker Classification assessment processes. Around 40-60% of compliance assessments have led to referrals for re-assessment.

Two aspects of both the previous and new regimes that have drawn some criticism are the role of Centrelink in assessing Participation Reports and the application of penalties to the pay period *after* the one in which a participation failure occurred (for example a non show no pay failure).

Roles of providers and Centrelink

Although giving employment services providers discretion to apply participation failures may speed up the decision making process, we do not support this idea as it would adversely affect the quality and consistency of decisions regarding penalties, lead to the overturning of more decisions later in the process, and would greatly increase the administrative burden on employment service providers. We recommend alternative measures to reduce the incidence of rejections of participation report recommendations.

We understand that the rate of rejection of participation reports has been high, and has fluctuated, in both the previous and new compliance regimes. One of the main reasons for this is that the employment service providers and Centrelink have different roles in the system and accordingly have developed different institutional cultures. The main role of the providers is to help people find employment while the main role of Centrelink is to ensure that payments are administered in a fair and consistent way across the country. Clearly, these roles overlap substantially since the providers are involved in the administration of the compliance system and Centrelink also works with job seekers to ensure that they comply with activity requirements.

However, a different organisational culture is required to perform the two roles described above. Since Centrelink administers social security law on behalf of the Parliament, its work is grounded in a detailed understanding and application of the principles of administrative law. Employment service providers operate primarily under contractual arrangements rather than legislation and they should ideally focus on each job seeker's individual pathway to employment rather than applying a consistent set of national 'rules' to everyone.

If employment service providers were given delegations under the Social Security Act to apply participation failures, a conflict would soon emerge between their contractual requirements to assist individuals to obtain employment as quickly as possible and their new responsibility under social security law to ensure that decisions are fair and consistent across the country. Although some other countries such as the United Kingdom combine these two roles, this normally occurs within the public employment service. The problem with these arrangements is that a public bureaucracy is (at least in theory) less adept at providing individualised employment assistance than employment service providers who are contracted by Government and funded according to outcomes achieved. This is one of the main reasons that the two functions are separated in Australia.

The delegation of authority to apply participation failures to employment service providers may also give rise to conflicts of interest. Under the present funding

arrangements, providers may have incentives to apply participation failures inappropriately in order to comply with requirements imposed by the current performance management system (for example, to quickly achieve employment outcomes). For example, we understand that in the past providers submitted participation reports simply in order to make contact with job seekers who may have been unaware that they were required to attend an appointment. This problem was alleviated recently by the introduction of a system of contact requests, where providers ask Centrelink to notify the job seeker of a missed appointment.

If employment service providers had delegations to apply participation failures they would come under considerable pressure to reorganise their operations to ensure the requirements of procedural fairness are followed and their decisions are nationally consistent. Consultants would require extensive training in social security law and procedural fairness and specialist review officers would probably be needed. It is likely that they would be overwhelmed with the new administrative workload. Of greater concern is the possibility that the service culture of providers would change, with a greater emphasis on procedural correctness at the expense of adapting service provision to individual needs.

For these reasons we support the retention of Centrelink's discretion not to apply participation report recommendations. However, the high rate of rejections remains a problem and we suggest a number of measures to improve consistency in provider and Centrelink decision-making. To begin with, providers should receive timely and thorough feedback on the reasons for non application of each participation report. In addition, formal mechanisms should be established for regular communication and feedback between providers and the relevant Centrelink staff. Training in administrative and social security law could be provided to employment consultants and they could attend this training together with their Centrelink counterparts. Consistency may also be improved if Centrelink and providers worked off the same activity test and compliance guidelines. Transparency would be improved if the provider guidelines were publicly available on a Government website (as is the Social Security Guide).

Timing of penalties

One of the strengths of the new compliance system is that penalties are applied in a more timely way. Rather than wait for up to a year to impose a severe penalty, a smaller one is applied shortly after the breach. Some argue that the system could be improved by bringing forward the timing of no show no pay and connection penalties, so that the job seeker's next payment is reduced, rather than the payment after as is now the case.

We do not support this approach, for two reasons. First, this would give unemployed people very little warning of a potential payment reduction, especially in the case of no show no pay penalties (which may be imposed without a prior warning or opportunity to 'reconnect'). This increases the risk that they will be unable to meet essential expenses such as rent. Second, it would put more pressure on the decision-making process of providers and Centrelink, increasing the risk of poorer quality participation reports and Centrelink decisions.

R2. The core elements of the present framework should be retained, including its emphasis on early intervention and re-engagement, Centrelink's discretion in applying participation failures and penalties, giving job seekers reasonable notice of reductions or

suspension of payments, comprehensive compliance assessments, the 'reasonable excuse' rules, access to the review and appeal system, payment pending review and appeal, and the capacity of job seekers to 'work off' financial penalties.

R3. To improve consistency between provider and Centrelink decisions and reduce wastage of resources

(1) Centrelink should be required to provide timely feedback to employment service providers on the reasons for decisions not to apply participation failures;

(2) Formal mechanisms should be established for regular interchange between Centrelink and providers to iron out any problems or inconsistencies in approach between it and providers;

(3) Consideration should be given to preparing a single set of policy guidelines for both Centrelink and providers, which would be publicly available;

(4) Consideration should be given to the development of national training materials and courses for employment consultants in the principles of administrative law.

4. Eight week no-payment penalties

One of the objectives of the new system was to reduce the incidence of the most severe penalties, to reduce financial hardship. While this was achieved in part by reducing the number of people penalised, the excessively harsh eight week penalty remains on the books and the new system has the potential to impose similar penalties on job seekers on their *first* breach of activity requirements (above and beyond the 'serious failure' provisions).

The eight week penalty is very harsh. It has led to evictions, and an inability for people to properly feed themselves. It is also counterproductive because it restricts a person's ability to comply with activity requirements. A lower penalty would be likely to achieve the same compliance effect without causing the same degree of hardship.

It would be theoretically possible under the new compliance system for job seekers to be denied income support for a number of weeks on their first participation failure through the operation of reconnection and no show no pay penalties. This could occur where a job seeker does not reconnect or re-engage in an activity for an extended period. The main protections against this are attempts by providers and Centrelink to contact job seekers to get them to re-engage, and the capping of current penalties once a comprehensive compliance assessment is arranged after three days of non compliance.

At present, no show no pay penalties stop after three participation failures because this triggers a compliance assessment. However, this also means that an eight week no-payment period could be imposed for what is in effect a single breach of requirements extending over three continuous days. For this reason, the original compliance Bill specified that 'persistent failure' (which triggers a possible eight week penalty) was defined as *three* connection failures or *six* 'no shows' within a six month period. This was subsequently amended to *three* failures in each case. One way to address this problem is to keep the threshold for compliance assessments at three failures in six months, but count a number of successive days of participation failure as a single failure for the purpose of defining 'persistent failure' (which triggers an eight week no-payment period).

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R4.

(1) For the purpose of determining whether participation failure has been persistent, failure to attend an activity for two or more days in succession within a given pay period should count as a single failure.

(2) A compliance assessment should still be triggered, and current penalties should be capped, once the number of day's payment lost reaches three within a six month period.

R5. The eight week non-payment period (the highest penalty) should be substantially reduced.

5. Complexity and lack of legislative clarity

Complexity

One of the greatest weaknesses of the new system is its complexity. There are four kinds of participation failure: connection, reconnection, no show no pay, and serious failures. Although the distinction between connection and non show no pay failures is supposed to be that between failure to attend appointment and failure to attend activities, this is not consistently so. For example, failure to attend an appointment with a prospective employer is a no show no pay failure, not a connection or failure. Each type of failure attracts a different penalty. Even the definition of a 'day's payment' varies between reconnection failures and no show no pay failures.

Given that a high proportion of unemployed people have less than 12 years of schooling and many have problems with literacy or English language, few are likely to fully understand their obligations, and the consequences of not meeting them. People cannot comply with requirements they do not understand.

The principles on which the system are designed are sound and readily understood: that, generally speaking, job seekers will be warned, given an opportunity to comply, that a day's payment may be deducted if they then fail to comply, and that after a number of breaches of the rules a larger penalty may apply.

It should be possible to design a much simpler system on these principles. A good starting point would be to merge the connection, reconnection and no show no pay failures into a single system with a standard sequence of a warning, an opportunity to engage or comply, and the loss of a day's payment for each day of subsequent non compliance. We acknowledge that this may have to vary a little at the margins so that penalties are commensurate with the seriousness of the breach.

A more consistent approach should also be taken towards compliance activities, which may be used to 'work off' a persistent failure but not a serious failure. These provisions should extend to those with serious failures.

R6. The compliance framework should be simplified by:

(1) Reducing the number of separate categories of participation failure, for example by combining connection, reconnection, and no show no pay failures into a single system;

(2) Aside from serious failures, the simplified system could be based on progression from a warning, to payment suspension (with reimbursement on compliance), to loss of a day's payment where appropriate.

(3) Applying more consistent penalties for participation failures, including a consistent method of calculation of a 'day's payment', and by extending access to the 'compliance activity' provisions to those penalised for 'serious failures'.

Legislative clarity

The legislation implementing the new system is silent on a number of its key features, notably the purpose of and procedures for comprehensive compliance assessments.

Another area of ambiguity is the definition of a 'no show' at a training course. Education and training providers do not always require attendance at classes. On the other hand, successful completion is not a reasonable requirement as some unemployed people may lack the ability to progress in education or training, or the course may not have been appropriate for the individual concerned. The sensible alternative would be to rely on the education or training provider to report on the requirements of the course (for example with regard to attendance) and the circumstances where these have not been complied with. It is important, however, to ensure that the providers are aware of the operation of the compliance regime and the potential consequences for job seekers of non compliance.

R7. The new framework should be more explicitly and clearly outlined in the legislation, including the role and process of comprehensive compliance assessments and the 'clean-slatting' of previous participation failures following these assessments.

R8. Compliance with a requirement to participate in an accredited training program should be based on reporting by the training provider and the requirements of each course, rather than a blanket requirement to attend all classes or the job seeker's performance in the tests or examinations. Information should be given to training providers to explain the compliance system and reporting requirements.

6. Risk management

The greatest challenge in designing a benefits compliance system is how to target the small minority of unemployed people who deliberately avoid complying with requirements without harming a much larger group of vulnerable job seekers who simply have difficulty dealing with complex rules and systems.

A risk management approach could assist. This should be based on timely information about the actual behaviour of *individuals* rather than targeting *groups* of job seekers in a discriminatory way because they may have a higher than average incidence of participation failures.

The timely sharing of information between providers and Centrelink regarding the reasons given for non compliance would assist with risk management. For example, where a job seeker repeatedly offers excuses which are on the face of it reasonable but

are not backed by evidence, it would be appropriate for providers and Centrelink to exercise caution before accepting similar excuses in the near future.

This information could be drawn together in comprehensive compliance assessments, which providers could be invited to attend where there are no specific indications of vulnerability or conflict between the job seeker and the employment consultant.

Conversely, a risk management approach should pay closer attention to any vulnerabilities the job seeker may have. These should be carefully examined in compliance assessments. It may be worthwhile for Centrelink and providers to share information on barriers to compliance faced by individual unemployed people more closely before the compliance assessment stage is reached, provided they have the express permission of the job seeker. This would require rigorous procedures to protect privacy, especially of any information held on an electronic or paper file. These should be in place in any event, for example to protect victims of domestic violence and to ensure the confidentiality of private medical information.

R9. Greater emphasis should be placed on risk management, so that those who wilfully and repeatedly avoid reasonable activity requirements without a reasonable excuse are penalised, and not those who are vulnerable or have difficulty dealing with complex rules and systems:

(1) Without increasing administrative burdens or breaching the privacy of job seekers, information could be shared in a 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.

(2) With the permission of the job seeker, information regarding personal vulnerabilities could also be shared in a more consistent fashion. Care should be taken with regard to sensitive medical information and risks of domestic or other violence, and providers should have protocols in place to deal with this information (especially with regard to respect for privacy, security of records, and training of staff).

(3) Consideration could be given to encouraging providers to attend comprehensive compliance assessments where there are no specific indications of vulnerability or conflict between the job seeker and the employment consultant.

7. Compliance data

The main source of data on the effects of the compliance system is the Education Employment and Workplace Relations department's compliance data series, published quarterly on its website.

These data should be used with caution as they have a number of limitations. When interpreting trends in participation failures and penalties, it can also be difficult to distinguish between the effects of the new regime and other unrelated events. The most important of these was the commencement of the new employment services contracts in July 2009. This meant that in the preceding quarter many providers were winding down services and in the subsequent quarter providers were focused on transitioning unemployed people to their service. A large proportion of employment service recipients were transitioned to a different service during the September quarter 2009. Anecdotally,

the providers focused mainly on this transition and setting-up processes at this time, so participation failures were less likely to be imposed. The data does indicate a drop in participation failures and penalties in that quarter, and a marked increase in the following quarter.

The data themselves have a number of limitations. They provide information about events such as participation failures and penalties rather than individuals. They do not inform us of the number of people affected or the number of people who are breached more than once in a quarter. A further problem is that we do not know about the timing of events. Since no show no pay and reconnection penalties apply on a daily basis it is possible for the same individual to be penalised for a sequence of days in the same pay period (fortnight) for what is in effect a single breach (such as failure to attend work experience). As this is likely to have a greater financial impact than a series of single day's penalties spread across a longer time frame, this distinction is important. Further, there are no breakdowns of the data by region or recipients flagged by the system as 'vulnerable', and there is no information on the numbers of participation reports submitted and their outcomes, or the number of compliance activities approved.

R10. The compliance data should be enhanced by quarterly reporting of the following information:

- *The distribution of no show no pay penalties according to the number of continuous days they are imposed (from one to three days in a given pay period).*
- *The same distribution for reconnection penalties (from one to six days).*
- *The number of participation failures submitted by employment service providers and their outcomes.*
- *The number of eight week no payment periods that are reduced in full or in part by participation in a compliance activity.*
- *The number of hardship exemptions from eight week no-payment periods.*
- *The distribution of participation failures and penalties by Centrelink area.*
- *The number of participation failures and penalties applied to unemployed people with a 'vulnerability flag' on their electronic file.*
- *The number of appeals lodged regarding penalties, and their outcomes at each level of the appeals system.*