NATIONAL SOCIAL SECURITY RIGHTS NETWORK

BUDGET 2017 – NEW COMPLIANCE SYSTEM

The 2017 Budget proposes a number of measures relating to the obligations of social security recipients obliged to look for work or participate in activities to help them find and keep a job, known as job seekers. The main measure is a complete overhaul of the system of sanctions and penalties for job seekers, known as the job seeker compliance framework, including the so-called "three strikes" phase. This note analyses this proposal.

It is useful to start by comparing the proposed compliance framework to the existing arrangements.

The current compliance framework

Under social security legislation, recipients of "activity tested" income support payments are required to look for work and/or undertake activities to improve their job prospects. The main activity tested payments are newstart allowance and youth allowance (if not a full-time student or apprentice). Administratively recipients of activity tested payments are known as job seekers and the requirements are known as mutual obligation or participation requirements.

A job seeker's requirements are recorded in their Job Plan by an employment services provider. They include attendance at appointments with the provider, job search, training or work for the dole activities.

If a job seeker fails to meet an obligation, eg missing an appointment with their provider, without reasonable excuse they may be subject to a sanction under social security law. This is known as the job seeker compliance framework.

Providers are responsible for monitoring a job seeker's compliance with their obligations. If a job seeker fails to meet an obligation, the provider is obliged to try to contact the job seeker to find out why they missed the appointment or failed to meet the obligation. If they are unable to contact the job seeker or don't think they have a reasonable excuse, the provider may report the non-compliance to the Department of Human Services (DHS). The provider's discretion about whether to report non-compliance to DHS or respond in some other way (such as rebooking an appointment) is a key feature of the current system.

There are a range of sanctions which may be applied, depending on the type of obligation which the job seeker has not met, their history of compliance and, in certain cases, the provider's choice.

For example, if a job seeker does not attend an appointment with the provider, the provider first seeks to contact the job seeker to find out why they missed the appointment (and why they did not tell the provider in advance). If unable to speak to job seeker or if not satisfied they have a reasonable excuse, the provider may:

- choose to deal with the situation without involving DHS (usually rebooking the appointment)
- send a report to DHS which triggers the suspension of the job seeker's payment and notification to the job seeker to contact the provider to rebook the appointment, with the suspension normally continuing until they attend the new appointment, or
- send a report to DHS which triggers the suspension of the job seeker's payment and recommends DHS apply a financial penalty (but only if satisfied the job seeker did not have a reasonable excuse after speaking to them).

The provider makes a different report, recommending a different type of penalty, for obligations other than appointments with the provider, such as failure to turn up to a job interview or activity such as work for the dole.

If a report is made, DHS investigates whether it should be applied, including whether the requirement was reasonable, had been properly notified to the job seeker and whether the job seeker had a reasonable excuse. It then makes a decision whether to apply the penalty or not. This decision is subject to the general rights of appeal available to DHS decisions, including internal review and appeal to the Administrative Appeals Tribunal.

Generally, financial penalties are 10% of the job seeker's payment, eg 10% for each missed day of an activity or 10% for each working day until the job seeker attends a rebooked appointment. However, if DHS applies three financial penalties to a job seeker within 6 months, the job seeker is referred to a compulsory assessment of their circumstances normally with a specialist DHS officer, known as a Comprehensive Compliance Assessment (CCA). The purpose of a CCA is to identify the underlying causes of the repeated non-compliance, unidentified barriers to employment and alternative support services. If, however, the DHS officer is satisfied that the repeated failures reflect persistent non-compliance they may impose a serious failure, which is an eight week period without income support.

A serious failure may also be imposed for failing to accept a suitable job offer.

Serious failures may be ended early or waived if the job seeker:

- agrees to a compliance activity, usually 25 hours per week for eight weeks of work for the dole or a similar activity, or
- does not have the capacity to undertake a compliance activity and would be in severe financial hardship if they served the eight week non-payment period.

How is the current compliance framework working?

The Department of Employment publishes quarterly data on the operation of the job seeker compliance framework, with data currently available until December 2016.

There are some significant trends reflected in that data.

Nationally, the total number of financial penalties has declined significantly in recent years. From 2014 to 2015 the number of penalties more than halved, falling from 448,993 to 202,774.

A significant factor in this decline was improved attendance at appointments following an earlier failure (such as a missed appointment), known as reengagement appointments. If a re-enagement appointment is missed without a reasonable excuse, a financial penalty may be applied (a reconnection failure). General levels of attendance at appointments with providers have remained at long-term levels, with about 75 to 80% of appointments attended or missed but with a reasonable excuse. However, there was a significant improvement in attendance at reengagement appointments over the period from mid 2014 to the end of 2015, with attendance improving from 66% in the September 2014 quarter to 88% in the March 2015 quarter. This corresponds to an administrative change in September 2014, when job seekers were required to rebook their appointment directly

with the provider, rather than via DHS. From 1 January 2015, suspension following a missed appointment continued until the job seeker attended a rebooked appointment (rather than, as previously, ending when they made the appointment).

As a result, the number of reconnection failures feel significantly, from 44,000 in the September 2014 quarter to only a little over 1000 in the whole last 6 months of 2015. Although the level of reconnection failures has increased since then, it remains much lower than past levels.

Another trend in the data affecting the level of penalties relates to how providers respond to missed appointments with them, as nationally missed appointments are the main reason for reports to DHS. As outlined above, providers have a choice of three options for how to respond: exercise discretion not to report the failure to DHS, trigger a payment suspension or trigger a payment suspension and recommend a financial penalty (known as a non-attendance failure). This system was put in place from mid 2014 to mid 2015, when the non-attendance failure was introduced. Over that period, the proportion of appointments in which providers trigger a suspension only (known as a "non-attendance report") as steadily risen, from about 40% in the September 2014 to 70% in the December 2016.

Since their introduction, the number of non-attendance failures has steadily increased, but this is more than offset by the decline in reconnection failures.

The decline in total penalties over this period is also likely to be attributable to the transition to the current "jobactive" employment services contracts in mid 2015, and reached a low in the September 2015 quarter before climbing steadily until the September 2016 quarter. They are still well below the peak in late 2014.

However, this national picture conceals the trends for a small proportion of job seekers, about 5%, who live in remote communities and are mainly Indigenous. Since 1 July 2015 remote job seekers have been part of a separate employment services program, known as the Community Development Program (CDP). Job seekers in the CDP with full time work capacity are required to do 25 hours per week over 5 days, year around, of work for the dole. By contrast, job seekers in the main national employment services program, jobactive, are only required to participate in work for the dole or a similar activity after 12 months in employment services and then for only 6 months of the year.

Job seekers in the CDP are subject to same job seeker compliance framework, but its impact has been very different. Since mid 2015 there has been a sharp and significant increase in penalties applied to this group of jobseekers, with total penalties for this group exceeding the number of penalties applied to jobactive job seekers, despite that group having more than 20 times the number of job seekers. The number of penalties applied increased in each quarter since the introduction of the CDP until the December 2016 quarter, when they fell coming back to slightly less than the number of penalties applied to jobactive job seekers. It is too early to say whether the December 2016 is a one-off, or whether there is a levelling off or fall in the number of penalties for this group.

The main source of penalties for this group are penalties for failing to attend an activity (work for the dole), known as "no show no pay" penalties, which are 10% of payment for each missed day of activity. This reflects the fact that the main obligation for CDP job seekers is participation in full time work for the dole. Lisa Fowkes and Will Sanders, researchers at the Centre for Aboriginal Economic

Policy Research at the Australian National University, have published a series of papers highlighting the impact of CDP on remote job seekers and the underlying causes (here).

It is also worth noting a long-term pattern in the data, which is the high proportion of reports by providers which are rejected by DHS, that is, do not result in the application of a penalty. This tends to range between 40 to 50% of reports. The main reason is that the job seeker in fact had a reasonable excuse. However, a significant proportion of reports are rejected because of "procedural errors" in how reports are submitted by providers.

Proposed new compliance framework

In the Budget the Government announced a new compliance framework to start from 1 July 2018 to apply to all job seekers, except CDP participants. This requires legislation. The new compliance framework is estimated to produce savings of about $204 million over four years.

The Government says that the purpose of the new compliance framework is to target and strengthen penalties for persistent and deliberate non-compliance, while giving more support to job seekers who are trying to meet their obligations. It has a particular concern about job seekers it sees as "gaming" the current system, repeatedly missing appointments but attending to re-booked appointment to avoid a financial penalty. It also argues that the ability to have a eight week failure waived by participating in a compliance activity undermines the deterrent effect of this penalty.

There are two "phases" in the new system.

Jobseekers begin in the "Personal Responsibility Phase". If they fail to meet their obligations without reasonable excuse in this phase, their payment is suspended and they accrue a demerit. Failures such as missing an appointment or failing to attend an activity attract 1 demerit point, but failure to attend a job interview attracts three demerit points. No financial penalty can be applied.

Once the job seeker accrues three demerits within 6 months, they must attend an interview with their provider to look at the underlying reasons for the demerits. This may result in a change to their mutual obligation requirements to fit their circumstances and demerits may be reset to zero.

If the job seeker accrues a fourth demerit within 6 months, they must attend an interview with DHS to look at their circumstances and why the demerits have been accrued. Again, DHS may adjust to their mutual obligation requirements to fit their circumstances and demerits may be reset to zero.

If not reset by DHS, a job seeker with four demerits enters the "Intensive Compliance Phase", or what has been called the "three strikes" phase in the media. In this stage, they face an escalating series of penalties, with:

- the first strike leading to a financial penalty of 50% of their fortnightly payment
- the second strike leading to loss of 100% of their fortnightly payment
- the third strike resulting in cancellation of their payment and a bar on reclaiming for four weeks.

A job seeker in the "Intensive Compliance Phase" who meets all their obligations for 3 months has their demerits reset to zero.

A job seeker who refuses suitable work at any stage has their payment cancelled and cannot reapply for four weeks.

ANALYSIS

Since its election the Coalition Government has unsuccessfully sought to address the deficiencies it perceives in the current compliance framework, including precluding waiver of eight week non-payment penalties for failure to accept a suitable job offer. But its proposed legislation failed to win the Senate's support. It has now announced this proposal for wholesale replacement of the current compliance framework.

The National Social Security Rights Network does not support the proposed new compliance framework. It has positive features, but as a package undermines some of the critical features of the current system.

Do we need a new compliance framework?

One of the Government's stated intentions is to support job seekers who are genuinely seeking to meet their obligations and look for work, while targeting job seekers who are gaming the system. It argues that the current system allows a minority of job seekers who regularly miss appointments to avoid a financial penalty by attending a re-booked appointment.

This is not an accurate portrayal of the current system.

To begin with, it is important to distinguish between appointments with providers and appointments with third parties, such as a training organisation or work for the dole provider.

As noted above, if a job seeker misses an appointment with their provider, the provider can trigger a payment suspension. However, since 1 July 2015, the provider has also had the option of recommending the application of a financial penalty, known as a non-attendance failure. The provider can recommend this for any missed appointment where they do not think the job seeker as a reasonable excuse, not just a re-booked appointment.

As discussed above, the trends reflected in the job seeker compliance data show that providers prefer to use suspension rather than financial penalties for missed appointments. However, the number of non-attendance failures applied as steadily risen since their introduction from 600 in the September 2015 quarter to 9175 in the December 2016 quarter.

In short, the claim that there is no capacity in the current system to apply sanctions to job seekers regularly missing appointments is incorrect.

If a job seeker misses an appointment with a third party, there is no immediate financial penalty. A connection failure is applied which does not result in a financial penalty, but does contribute to the count of failures which may result in a CCA and a potential serious failure of 8 weeks without penalty.

This does, in theory, open up the possibility of the kind of "gaming" described by the Government. However, the reality is that nationally most regular appointments are with a job seeker's employment services provider, not a third party. In the December 2016 quarter, for instance, 76% of reports to

DHS by providers were for missed appointments, with a further 20% for failure to attend an activity. All other failures, which would include failure to attend a third party appointment, accounted for only 4% of reports. As a result, in the December 2016 quarter there were only 390 connection failures applied for failing to attend a third party appointment.

This does not suggest a large scale problem.

It may be that the real concern, therefore, is not with a perceived gap in the compliance framework but that the sanctions being applied are not severe enough.

In the NSSRN's view, this view fails to accommodate the reality of the low rate of payment for job seekers and the financial hardship most face while on income support, nor current trends in the level of penalties being applied for missing provider appointments.

It is true that providers have for some time now clearly favoured suspension as the appropriate sanction if a job seeker misses an appointment. However, suspension is a significant sanction, especially if the suspension occurs just before the job seeker's income support is due to be paid. This is because, like most of us, job seekers tend to pay their significant obligations such as rent immediately and a delay in payment means they fail to meet those obligations.

In addition, there is a clear upward trend in the total of appointment related failures (reconnection and non-attendance failures). In the December 2016 quarter, these failures totalled 12,570 (although some of these reconnection failures would have related to missed DHS appointments). This is trending up towards the level of reconnection failures applied in early 2015 and, potentially, towards the levels when the total number of penalties in the national system peaked in late 2014.

Finally, if there is a problem with the response to job seekers who game the current system, it could be addressed by changing the guidance given to providers about considerations to take into account when deciding how to respond to a job seeker who has missed an appointment. This guidance could direct providers to consider the job seeker's history and pattern of attendance.

The other concern raised by the Government is waiver of the eight week penalty.

The recent trend is for a high proportion of these eight week failures to be waived, mainly by undertaking a compliance activity. It was over 90% in the December 2016. This may reflect the fact that CDP participants currently account for the majority of these failures, about 80% in the December 2016. Their normal obligation of full-time work for the dole satisfies the compliance activity, which may mean that they work off these penalties more readily. The longer term numbers, before the impact of CDP, show that normally only about 75% of these penalties were waived.

It is important to note that the data does not tell us how long the job seeker was without payment before agreeing to the compliance activity. In at least some cases, the job seeker may have experience a period without income support before the waiver was applied.

It is also debatable whether the high level of waiver of eight week penalties is a policy failure. Waiver of these penalties serves to positive purposes. It engages the job seeker in the employment services system, rather than excluding them from it, and it prevents unduly harsh penalties for job seekers (and their families) from extended periods without income which can result in hardship and related problems such as homelessness.

Positive features of the proposed system

The proposed system has some positive features.

For most job seekers who meet all or most of their obligations, the only sanction for a failure to meet those obligations will be suspension of their payment. This builds on one of the successful features of the existing system since 2014, where the use of suspension by providers (combined with the administrative change to make providers responsible for re-booking appointments) has driven high levels of attendance at re-engagement appointments.

Currently, DHS conducts a CCA after three failures within six months. In the December 2016 quarter, more than 50% of these resulted in an outcome other than the imposition of a serious failure. This is consistent with our experience that a significant proportion of job seekers with higher levels of non-compliance have undisclosed barriers to participation, such as domestic violence, homelessness or a medical condition. Another positive of the new system is that it builds in an extra intervention point, where the provider is required to assess a job seeker's circumstances.

It is also a much simpler system. The current system is complex, with different types of penalty for different types of obligation (appointments, activities, job interviews and so forth). This may give rise to a range of problems. The compliance framework may be applied inconsistently by different providers. It may also result in inconsistent penalties for similar behaviours. For example, missing one appointment may attract a 10% penalty per business day until the make up appointment, whereas missing one day of an activity attracts a one-off 10% penalty.

The proposed system addresses this in two basic ways. Financial penalties will not apply to the majority of job seekers and there is a single system of demerit points, with one demerit accrued for most types of failure.

It may also reduce the level of unnecessary activity and the associated administrative cost of provider reports. As noted above, nearly half of provider reports are rejected by DHS. The proposed system reduces this activity, by reducing the complexity of the system for the majority of job seekers who meet most of their obligations.

The potential reduction in administrative costs may account for some of the estimated savings for this measure.

Negative features of the proposed system

The new system is intended to be impose heavier sanctions on certain job seekers and this is reflected in the estimated savings from this measure (although some of these savings may be administrative).

The ultimate sanction in the proposed system has been reduced from eight weeks to four weeks. However, unlike the current system, it appears that this four week non-payment period cannot be waived.

The NSSRN opposes this. The possibility of having serious failures waived by undertaking a compliance activity is an important feature of the current system for preventing severe financial hardship and keeping job seekers engaged with the system.

Similarly, the NSSRN opposes the increased level of penalties in the "three strikes" phase. The standard penalty in the current system is a 10% penalty. This is a significant penalty for job seekers. A perception that this is inadequate fails to take account of the low rate of payment for job seekers.

Under the proposed system, the first sanction in the "three strikes" phase is loss of 50% of the job seeker's income support payment. This is likely to place many job seekers into immediate financial hardship and unable to meet basic living expenses.

Conclusion

The Government has not provided a satisfactory justification for the wholesale replacement of the current system. There isn't a gap in the current system which prevents penalties being applied to job seekers who regularly miss appointments with their providers.

The proposed compliance system has positive features, especially when it builds on the strengths of the existing system such as the use of suspension. There is potential to take up some of these ideas and improve the existing system, without introducing the unduly harsh sanctions proposed by the Government.

The real problem with the current system is the unacceptable and grossly disproportionate level of penalties being applied to the minority of job seekers in remote communities, most of them Indigenous, under the CDP program.