The Parliament of the
Commonwealth of Australia

THE SENATE

Social Security Legislation Amendment
(Employment Services Reform) Bill 2008

(Amendments to be moved by Senator Siewert on behalf of the Australian Greens in committee of the whole)

(1) Clause 3, page 2 (lines 7 to 11), omit the clause, substitute:

3 Schedule(s)

(1) Each Act, and each determination, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(2) The amendment of any determination under subsection (1) does not prevent the determination, as so amended, being amended or repealed by the Secretary.

[bill may amend determinations]

(2) Schedule 1, item 1, page 4 (line 22), omit “must”, substitute “may”.

[Centrelink discretion]

(3) Schedule 1, item 1, page 5 (lines 28 to 31), omit paragraph 42C(4)(a), substitute:

(a) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or

[reasonable excuse]

(4) Schedule 1, item 1, page 6 (line 5), at the end of subsection 42C(5), add “, provided that the penalty amount may not be deducted until at least the instalment after the first instalment made following notification to the person of the no show no pay failure”.

[timing of deduction of penalty amount]

(5) Schedule 1, item 1, page 6 (line 7), section 42D, omit “If”, substitute:

(1) Subject to subsection (2), if

[reconnection and hardship provisions]
(6) Schedule 1, item 1, page 6 (after line 15), at the end of section 42(D), add:

Reconnection and hardship provisions

(2) If the Secretary determines that a person commits more than 2 no show no pay failures within the same instalment period, the Secretary may determine that the person’s penalty amount is to be reduced or waived if:

(a) the person begins to comply with a no show no pay requirement imposed on the person; or

(b) the Secretary determines that:

(i) the person does not have the capacity to undertake any no show no pay requirement; and

(ii) the deduction of the penalty amount would cause the person to be in severe financial hardship.

Note: For in severe financial hardship see subsection 14A(7) of the 1991 Act.

(3) If the Secretary determines that a person commits a no show no pay failure, then the Secretary may require the person to comply with a requirement (the no show no pay failure requirement).

[reconnection and hardship provisions]

(7) Schedule 1, item 1, page 6 (line 18), omit “must”, substitute “may”.

[Centrelink discretion]

(8) Schedule 1, item 1, page 8 (line 32), omit “must”, substitute “may”.

[Centrelink discretion]

(9) Schedule 1, item 1, page 9 (after line 30), after subsection 42H(4), insert:

(4A) The Secretary may end a person’s reconnection failure period if the Secretary determines that:

(a) the person does not have the capacity to undertake the reconnection requirement; and

(b) the deduction of the penalty amount would cause the person to be in severe financial hardship.

[hardship provisions]

(10) Schedule 1, item 1, page 9 (line 35), at the end of subsection 42H(5), add “, provided that the penalty amount may not be deducted until at least the instalment after the first instalment made following notification to the person of the reconnection failure”.

[timing of deduction of penalty amount]

(11) Schedule 1, item 1, page 12 (line 10), omit “must”, substitute “may”.

[Centrelink discretion]

(12) Schedule 1, item 1, page 12 (after line 22), after section 42N, insert:

42NA Comprehensive compliance assessment

(1) Before the Secretary determines that a person has committed a serious failure under section 42M, the Secretary must conduct a comprehensive compliance assessment in relation to the person.
(2) The comprehensive compliance assessment must assess the following:
   (a) the reasons why the person may have committed failures under this Division;
   (b) the reasons why the person may have failed to meet other requirements under the social security law;
   (c) whether the person has any barriers to employment;
   (d) whether the person’s participation requirements are appropriate.

(13) Schedule 1, item 1, page 12 (after line 22), after section 42N, insert:

42NB Serious failure for unemployment resulting from a voluntary act or misconduct

(1) The Secretary may determine that a person commits a serious failure if:
   (a) the person is unemployed as a result (whether direct or indirect) of a voluntary act of the person; or
   (b) the person is unemployed as a result of the person’s misconduct as an employee.

   Note: A participation payment is not payable for 8 weeks for a serious failure (see section 42P).

Limitations on determination

(2) Despite subsection (1), the Secretary must not determine that a person commits a serious failure under that subsection if the person satisfies the Secretary that the person has a reasonable excuse for the failure.

   Note: The Secretary must take certain matters into account for the purposes of subsection (2) (see section 42U).

   Note: The Secretary may continue the participation payment pending the outcome of an application for review (see sections 131 and 145 of the Administration Act).

(14) Schedule 1, item 1, page 12 (after line 22), after section 42N, insert:

42NC Determination about serious failure requirements and severe financial hardship

If the Secretary determines that a person commits a serious failure, the Secretary must also determine that this section applies unless the Secretary is satisfied that:
   (a) the person does not have the capacity to undertake any serious failure requirement; and
   (b) serving the serious failure period would cause the person to be in severe financial hardship.

[ending serious failure periods]

(15) Schedule 1, item 1, page 12 (line 25), after “serious failure” insert “and has determined that section 42NC applies”.

[ending serious failure periods]

(16) Schedule 1, item 1, page 13 (line 28), after the note, insert:

(1A) The Secretary may make a determination under paragraph (1)(b) on request or on his or her own initiative.

[ending serious failure periods]
(17) Schedule 1, item 1, page 13 (lines 32 to 33), omit paragraph 42Q(2)(b), substitute:
   (b) if the Secretary makes a determination under paragraph (1)(b) on request—the day before the request was made; or
   (c) if the Secretary makes a determination under paragraph (1)(b) on his or her own initiative—the day before the Secretary makes the determination.
   [ending serious failure periods]

(18) Schedule 1, item 1, page 13 (line 34), after the note, insert:
   (3) Section 42NC does not affect the operation of this section.
   [ending serious failure periods]

(19) Schedule 1, item 1, page 17 (line 24), omit “42Q(2)(b)”, substitute “42Q(2)(c)”.  
   [ending serious failure periods]

(20) Schedule 1, item 1, page 14 (line 18) to page 15 (line 26), subdivision E TO BE OPPOSED.
   [unemployment resulting from a voluntary act or misconduct]

   Amendment (21) is an alternative to amendments (13) and (20)

(21) Schedule 1, item 1, page 14 (line 31 to 33), omit subsection 42S(2), substitute:
   (2) Despite subsection (1), the Secretary must not make a determination under that subsection if the Secretary is satisfied that the voluntary act or misconduct was reasonable.
   [unemployment resulting from a voluntary act or misconduct]

(22) Schedule 1, item 1, page 15 (after line 27), before section 42T, insert:

   42SA Discretion not to report non-compliance

   (1) An employment service provider may exercise a discretion not to report to the Secretary that a person has failed to comply with an obligation in relation to a participation payment if the employment service provider considers, on reasonable grounds, that compliance action under this Division is not the best means of securing re-engagement and is counter-productive to the person obtaining employment.

   (2) For the purposes of this section, an employment service provider is a provider of employment services contracted by the Commonwealth.
   [discretion not to report non-compliance]

(23) Schedule 1, item 1, page 17 (after line 4), at the end of section 42U, add:

   Homelessness

   (3) A determination under subsection (1) must provide that, in deciding whether a person has a reasonable excuse for the matters listed in that subsection, the Secretary must take into account whether the person is homeless or is at risk of becoming homeless and, if so, whether that circumstances has affected the person’s capacity to meet the person’s obligations under this Division.

   Note: homeless has a meaning affected by section 19DA.
   [reasonable excuse and homelessness]

(24) Schedule 1, item 1, page 17 (line 24), omit “42Q(2)(b)”, substitute “42Q(2)(c)”.

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(25) Page 17 (after line 31), at the end of Part 1 of Schedule 1, add:

Subdivision G—Review

42ZA Review of operation of Division

(1) The Minister must cause a review to be undertaken of the operation of this Division.

(2) The review must start 1 year after the commencement of this Division and be completed within 3 months.

(3) The review must include an assessment of the Division’s effectiveness in:
   (a) improving compliance;
   (b) reducing financial hardship; and
   (c) reducing compliance costs for job seekers, employment service providers and Government;
   with particular reference to vulnerable job seekers including Indigenous people.

(3) The person undertaking the review must give the Minister a written report of the review, and the Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of receiving the report.

(26) Schedule 4, page 61 (after line 4), before item 1, insert:

1A After section 19D

Insert:

19DA Homelessness

(1) For the purposes of the social security law, homelessness and homeless have meanings affected by this section.

(2) The following are objectives of the social security law:
   (a) the need to give people a sustainable pathway out of homelessness; and
   (b) the need to minimise the risk of people becoming homeless.

(3) When assessing the social security entitlements and social security benefits of any person, in circumstances in which the Secretary is required to consider the residential status of the person, hardship provisions which may relate to the person’s circumstances or the ability of the person to meet obligations imposed by the social security law, the Secretary must have regard to the objectives set out in subsection (2).

(4) In applying a definition of homelessness, the Secretary must have regard to the following categories of homelessness, drawn from the Australian Bureau of Statistics’ Australian Census Analytic Program document, Counting the Homeless:
   (a) primary homelessness, which accords with the common sense assumption that homelessness is the same as ‘rooflessness’ and includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter;
(b) **secondary homelessness**, which includes people who move frequently from one form of temporary shelter to another and includes people staying in emergency or transitional accommodation, including hostels for the homeless, night shelters and refuges, and also including people residing temporarily with other households because they have no accommodation of their own;

(c) **tertiary homelessness**, which refers to people who live in boarding houses on a medium- to long-term basis, operationally defined as 13 weeks or longer, whose accommodation situation is below the minimum community standard.

[definition of homelessness]

(27) Page 67 (after line 33), at the end of the bill, add:

**Social Security (Reasonable Excuse) (DEWR) Determination 2006**

15 **Paragraph 4(2)(a)**

Omit the paragraph, substitute:

(a) the fact that the person is homeless or is at risk of becoming homeless at the time that the failure or refusal occurred;

[definition of homelessness]