Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014

Matthew Thomas
Social Policy Section

Contents

Purpose of the Bill ................................................................. 2

Background ........................................................................ 2
  Job seeker requirements—connection and reconnection failures ........................................ 2
  Changes to job seeker compliance arrangements, 2006–2011 ........................................ 2
  Rates of non-attendance at employment services provider appointments .................... 3

Committee consideration .................................................. 4
  Senate Education and Employment Legislation Committee ........................................... 4
  Senate Standing Committee for the Scrutiny of Bills .................................................. 4
  Parliamentary Joint Committee on Human Rights .................................................... 5

Position of major interest groups ........................................ 5

Financial implications ....................................................... 5

Statement of Compatibility with Human Rights .................. 6

Key issues and provisions .................................................. 6
  Suspension of payment for non-attendance ................................................................. 6
  Sanctions for appointment non-attendance .................................................................. 7
  Removal of appeal rights .......................................................................................... 8
  Removal of activity test concessions for job seekers aged 55 years and over ............... 8
  Non-attendance failures ............................................................................................ 9
  Delegation .................................................................................................................. 10

Concluding comments ...................................................... 10

Date introduced:  25 September 2014
House: House of Representatives
Portfolio: Employment

Commencement: Schedule 1, Part 1—1 January 2015; Schedule 1 Part 2—1 July 2015; Schedule 2—on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
Purpose of the Bill
The purpose of the Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014 (the Bill) is to amend the Social Security (Administration) Act 1999 (SSAA) and the Social Security Act 1991 to:

- from 1 January 2015, provide for job seekers who miss an appointment with their employment services provider without a reasonable excuse to have their payment suspended immediately and reinstated only when they attend a rescheduled appointment
- from 1 July 2015, provide for job seekers who have their payment suspended for failure to attend an appointment with their employment services provider without a reasonable excuse to not be back-paid for the period in which they fail to attend the appointment
- from 1 July 2015, enable the Secretary to specify through legislative instrument a group of job seekers aged over 55 years who are not to be exempt from activity test and participation requirements as a result of their participation in approved voluntary work, paid work or a combination of these and
- extend the delegation powers of the Secretary to include regulations and other instruments made under social security law.

Background
Primarily, the Bill gives effect to changes intended to ensure that more job seekers attend appointments with their employment service providers, announced by Assistant Minister for Employment, Luke Hartsuyker on 29 June 2014.¹

Job seeker requirements—connection and reconnection failures
Under the Social Security Act, all recipients of Newstart Allowance or Youth Allowance (other) must comply with the activity test and other participation requirements in order to qualify for government-provided income support.² This means that a person must be actively seeking and willing to undertake paid work that is suitable for that person, and that they must, among other things, attend appointments with their employment services provider when required to do so.

Where a person fails, without reasonable excuse, to attend an appointment with their provider, this constitutes a connection failure. Currently, a connection failure does not result in a financial penalty but contributes towards the count of failures used to determine whether a person has committed either a reconnection failure or a serious failure due to persistent non-compliance. Once the person contacts or is contacted by Centrelink and agrees to attend a further appointment, their payment is restored from the date that it was suspended (that is, they are fully back paid). If the person does not agree to attend the further appointment, it is booked regardless and their payment remains suspended.

Failure to attend the further appointment without a reasonable excuse results in a reconnection failure and suspension of payment until the person complies with the reconnection requirement. During a reconnection failure period, a person accrues a penalty equivalent to their daily rate of payment for each day of the reconnection failure period—that is, they are not back paid upon meeting their requirement. Rent assistance and other non-participation-related add-on payments are not affected by the penalty.

Changes to job seeker compliance arrangements, 2006–2011
Connection and reconnection failures form a part of the new job seeker compliance system that was introduced along with the Job Services Australia employment services system in July 2009.

Under the previous job seeker compliance arrangements (which were instituted along with the Welfare to Work reforms in 2006), a person was able to accumulate two such failures (‘participation’ failures) without incurring a penalty. So long as the person who committed a first or second participation failure met their appointment with

---

1. L Hartsuyker (Assistant Minister for Employment), New approach to help job seekers do the right thing, media release, 29 June 2014, accessed 1 October 2014.
their provider, generally in the fortnight following the failure, a financial penalty was not imposed. If they did not do so, their payment for that fortnight would only commence from the day they did attend the appointment. On the third participation failure within a twelve month period, however, a person would automatically be subject to an eight week loss of payment. Further participation failures within a twelve month period resulted in an additional eight week loss of payment.³

These arrangements were criticised in submissions to a review of employment services conducted in 2008, primarily on the grounds that they provided little in the way of deterrence or opportunities for early intervention. It was argued that people were given too much of an opportunity to become disengaged before potentially being penalised with an eight week loss of payment.⁴

When the new compliance arrangements were introduced in 2009, it was initially intended that losses of payment for a connection failure would be incurred on the next day on which the person’s regular payment was due. This, it was hoped, would emphasise the link between the failure and the sanction. Concern about the hardships that this might cause led to the Social Security Legislation Amendment (Employment Services Reform) Bill 2009 being changed to delay the loss of payment for one payment period.⁵

In 2010 the report of an independent review of the new job seeker compliance system was released.⁶ The review found that at the end of the first year of the new system, there had been a significant reduction in the number of connection and reconnection failures when compared with the number of equivalent failures in the last year of the previous system. Nevertheless, it was argued that there might be room for further improvement with regard to job seekers’ attendance at appointments with employment services providers.⁷

In 2011, the Rudd-Gillard Government introduced to the parliament a Bill that sought to tighten up the connection and reconnection arrangements introduced in 2009. The Bill was assented to on 27 June 2011 and the Social Security Legislation Amendment (Job Seeker Compliance) Act 2011 (the 2011 Act) allowed for the current arrangements, described above.⁸ As such, the 2011 Act effectively reversed the abovementioned change to the Social Security Legislation Amendment (Employment Services Reform) Bill 2009 and reinstated the original intent of the Bill, in this respect.

Rates of non-attendance at employment services provider appointments

In 2012–13, 11,578,851 appointments were made for job seekers to meet with Job Services Australia and Disability Employment Services providers.⁹ Of these, 7,302,117 (63 per cent) appointments were attended by job seekers and 4,276,734 (37 per cent) were not.¹⁰

Of those appointments that were not kept by job seekers: in 15 per cent of cases job seekers gave a valid reason for their non-attendance; in 15 per cent of cases they gave an invalid reason; and, in seven per cent of cases, providers considered that the job seeker did not have a reasonable excuse for non-attendance or were unable to make contact with them, but decided not to report the job seeker, but rather to employ another method of re-engaging them.¹¹

The figures for 2012–13 are almost identical with those of 2011–12, and represent a significant improvement on the attendance rates for 2010–11.¹²

---

4. Ibid., p. 16.
7. Ibid., pp. 67–68.
10. Ibid.
11. Ibid. Matters to be taken into account in determining if a person had a reasonable excuse for not attending an appointment are specified at section 5 of *Social Security (Reasonable Excuse—Participation Payment Obligations) DEEWR Determination 2009 (No. 1)*, accessed 1 October 2014.
Assistant Minister for Employment, Luke Hartsuyker, is reported as having stated that the ‘non-attendance rate of 35 per cent [for the 2013–14 financial year] is simply not acceptable’. Strictly speaking, so long as it is recognised that in some instances job seekers will not be able to attend appointments for valid reason, then arguably the non-attendance rate in the 2013–14 financial year was closer to 20 per cent. (The percentage of appointments where the person did not attend, but was considered to have a valid reason for non-attendance, being 15 per cent in the two previous financial years.) This figure is reduced still further if it is agreed that the job seeker compliance framework should enable employment services providers to exercise a degree of discretion; that is, that it should allow them to adopt at times alternative strategies to re-engage job seekers without taking formal compliance action.

Committee consideration

**Senate Education and Employment Legislation Committee**

The Bill has been referred to the Senate Education and Employment Legislation Committee for inquiry and report by 24 November 2014. The link to the inquiry homepage is [here](#).

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills has considered the Bill and has raised a number of issues.

The Committee’s first concern relates to the delegation to employment services providers (rather than just Centrelink officers) the power to issue reconnection requirements to job seekers. This, the Explanatory Memorandum argues, should ensure that job seekers ‘receive the opportunity to comply with a reconnection requirement as quickly as possible and that the reconnection appointment is scheduled for a time at which the job seeker could reasonably be expected to attend’. It is intended that ‘the reconnection appointment would be scheduled to occur for a time no more than two business days from the date the person contacted their provider’.

Should an employment services provider not be in a position to issue a reconnection appointment promptly, the Explanatory Memorandum observes that it is within the Secretary’s powers under paragraph 42SA(2)(b) of the SSAA to reinstate the payment before attendance at a reconnection appointment, where this is deemed appropriate.

Given that one of the main objectives of the Bill is to improve job seeker attendance at appointments, the Committee is concerned that where job seekers do attempt to schedule a reconnection appointment they should not be penalised with a payment suspension due to circumstances beyond their control. The Committee has sought the Minister’s advice as to ‘whether consideration has been given to an amendment which would require (rather than enable) the Secretary to reinstate payment when a job seeker is unable to be issued with a reconnection appointment within two business days from the date the person contacted their employment provider’.

Principal solicitor of the Welfare Rights Centre, Matthew Butt, has similarly observed that, in his view, the Bill should be amended to include ‘a new provision obliging the Minister to issue a legislative instrument determining matters which Centrelink must take into account when deciding whether to end a period of suspension early, including the inability of a provider to provide a rescheduled appointment within two business

---


17. Ibid.


days’. Butt goes on to argue that ‘at the very least, the Government should commit to issuing policy guidance to Centrelink to ensure consistency in the exercise of the discretion to end the suspension early in these cases’. The Committee goes on to express similar concerns about the changes which allow the Secretary to withhold a greater proportion of a person’s payment (new subsection 42SA(2A), at item 8 of Schedule 1). The Explanatory Memorandum notes that ‘it is intended that in practice flexible arrangements would be put in place to ensure that these amendments would not result in a job seeker experiencing undue delay in receiving payment’. Given the scope for abuse and/or neglect in relation to this amendment, and the potential gravity of their impact on job seekers, the Committee has sought clarification from the Minister. It has asked for further details about the ‘flexible arrangements,’ including whether the Department or employment services providers will be responsible for their implementation, and ‘whether consideration has been given to including protections against undue delay in the legislation’. Matthew Butt has also argued that safeguards against unduly long periods of suspension should be put in place, and argued that the Bill should be amended to stipulate that the withholding of payments should not be applied to disadvantaged job seekers.

As outlined above, the Committee has expressed concerns about the more flexible arrangements for organising reconnection appointments, the potential for their failure, and the possible consequences of this for affected job seekers. Having flagged these concerns, the Committee leaves open the question of the appropriateness of not providing for merits review of decisions relating to non-payment penalties for failure to attend a required appointment.

The Committee also has reservations about the amendments that allow the Secretary to specify, through legislative instrument, a class of persons aged 55 or over who are not to be exempt from activity test and participation requirements as a result of their participation in approved voluntary work, paid work or a combination of these. As the Committee sees it, this is a change that is of considerable significance and one that should be realised ‘through an amendment to the primary legislation rather than through a legislative instrument’. The Committee does not consider the grounds provided in the Explanatory Memorandum to justify this approach to be sufficient, and has sought further advice from the Minister on why the change should not be included in primary rather than secondary legislation.

**Parliamentary Joint Committee on Human Rights**
The Committee has deferred its consideration of the Bill.

**Position of major interest groups**
Various issues have been raised by community welfare groups in submissions to the Senate Education and Employment Legislation Committee inquiry into the Bill. These are discussed in the ‘Key issues and provisions section’ below.

**Financial implications**
The Explanatory Memorandum anticipates savings of $161.1 million over the forward estimates period as a result of measures contained in the Bill.

---

21. Ibid.
24. M Butt, op. cit.
26. Ibid.
Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.29

Key issues and provisions

Suspension of payment for non-attendance

The following amendments under Schedule 1, Part 1 are intended to commence on 1 January 2015.

Currently, under subsection 42SA(2) of the SSAA, where a person fails to attend an appointment required by their employment pathway plan, the Secretary may suspend their payment until the day on which the person notifies the Secretary of their intention to attend a rescheduled appointment—that is, to comply with the reconnection requirement imposed on them under paragraph 42G(e).30 The same arrangement applies where the person fails to attend the rescheduled appointment (under subparagraph 42SA(2)(a)(i)). As such, as soon as the person indicates their intention to attend a re-scheduled appointment, their payment is reinstated. The Secretary may, however, determine under paragraph 42SA(2)(b) that a person’s payment suspension may be ended earlier.

Item 6 of Schedule 1 of the Bill amends paragraph 42SA(2)(a) of the SSAA to enable a non-payment penalty for failure to attend an appointment to end, not when the person notifies the Secretary of their intention to attend a rescheduled appointment, but on the day before the day on which they actually attend the appointment (new subparagraph 42SA(2)(a)(ii)). Under new subparagraph 42SA(2)(a)(ii) a person who fails to attend their rescheduled appointment has their payment restored the day before the day on which they failed to meet their rescheduled appointment. However, as the Explanatory Memorandum notes, ‘it is intended that in this instance—but only if there was no reasonable excuse for not attending the reconnection appointment—another determination to suspend the person’s payment would usually be made under subsection 42SA(1) and a further reconnection requirement would then be issued to them’.31 Hence, a person would be required to attend a rescheduled appointment, with their payment remaining suspended until they did so, or until the Secretary determined that they had a reasonable excuse not to do so or otherwise decided to reinstate their payment.

One of the key stated objectives of the Bill is to ensure that where a job seeker has failed to attend an appointment, they should be reconnected with their employment services provider as soon as possible. To this end, the Government has delegated to employment services providers the power to issue reconnection requirements, with this provision having been included in its Request for Tender for Employment Services 2015–2020.32 In theory, this should enable reconnection appointments to be made more quickly than where Centrelink officers are responsible for booking a reconnection appointment for job seekers after having received reports of compliance failures from employment services providers. However, as noted above, the Senate Standing Committee for the Scrutiny of Bills has (along with the Welfare Rights Centre and National Welfare Rights Network) recommended that additional safeguards for job seekers be put in place in relation to this change. It has proposed that the Bill should be amended to require the Secretary to reinstate a person’s payment where they are not able to be issued with a reconnection appointment within two business days of contacting their employment services provider.

Originally, the Government had intended that employment services providers would also be given responsibility for determining whether or not a job seeker had a reasonable excuse for non-attendance at their initial appointment. This decision would then have determined if the penalty provided for by this Bill would have been imposed on the job seeker. This provision was included in the Exposure Draft for Employment Services 2015–2020 Purchasing Arrangements document.33 However, in response to concerns expressed by employment

---

29. The Statement of Compatibility with Human Rights can be found at pages 26 to 38 of the Explanatory Memorandum to the Bill.
services providers—‘that making decisions about benefit sanctions would be a new source of red-tape, would distract from their core task of getting people into jobs, and would undermine the relationship between case managers and their clients’—the Government chose not to introduce this change. 34

**Sanctions for appointment non-attendance**

Under current arrangements, a person who fails to attend a required appointment (or fails to comply with any other requirement under subsection 63(2) of the SSAA) for a part of their fortnightly payment period and has their payment suspended as a result may be paid, during that payment period, for any days in which they were compliant or for those days before the failure occurred. Subsection 42SA(3) stipulates that when the person complies with their requirement, the participation payment becomes payable to the person for that period.

**Item 8** inserts **new subsection 42SA(2A)** which allows the Secretary to withhold payment for the part of the fortnightly payment period in which the person was compliant until the end of the relevant payment period. That is, the person may have their payment withheld in its entirety and only reinstated at the next payment period. It is intended that this change will ‘provide a greater incentive for job seekers to re-engage quickly with their employment provider and ... encourage better compliance with participation obligations’. 35

As noted above, the Senate Standing Committee for the Scrutiny of Bills has indicated that it has some concerns with this change, concerns that are shared by the Welfare Rights Centre and the National Welfare Rights Network.

The National Welfare Rights Network, in particular, has criticised the suspension of a person’s entire payment, rather than just suspending or withholding the penalty amount. Given the low level at which Newstart Allowance is paid, the Network observes that ‘a penalty equivalent of one or two day’s pay can have a significant impact on the person’s ability to meet expenses for that week’. 36 The Network acknowledges that the Government intends to keep penalty periods as short as possible through its policy of reinstating a person’s payment where a reconnection appointment cannot be scheduled within two days. However, it has argued—similar to the Senate Standing Committee for the Scrutiny of Bills—that this safeguard should be included in the Bill itself, along with ‘other circumstances in which the discretion to end the suspension early will apply’. 37 Both the Welfare Rights Centre and the National Welfare Rights Network have recommended that full suspension of a person’s payment for non-attendance should not be applied to disadvantaged job seekers. 38

Currently, under subsection 64(1) of the SSAA, where a person fails to comply with the requirements specified at subsection 63(2) of the Act (which include requirements to attend a Centrelink office or another place, or provide information to the Secretary), the Secretary may suspend their payment until such time as he or she deems it no longer reasonable to do so—chiefly, where the person has fulfilled their requirement.

**Item 9** inserts **new subsection 42SA(1A)** which provides that subsection 64(1) does not apply where the Secretary makes a determination under subsection 42SA(1) that a participation payment is not payable to a person because they have failed to attend an appointment that they were required to attend by a notice given under subsection 63(2). The effect of this provision is that, in these circumstances, the time at which a person’s non-payment period ends is as provided at section 42SA, rather than section 64—that is, it will end on the day before the day on which the person actually attends the appointment, or earlier if the Secretary deems this appropriate (section 42SA(2)(b)).

34. Jobs Australia, *Employment services tender: sensible changes but job seekers will still suffer*, media release, 7 October 2014; Eric Abetz (Minister for Employment) and L Hartsuyker (Assistant Minister for Employment), *Tender open for employment services 2015–20*, joint media release, 7 October 2014, accessed 28 October 2014. Principal solicitor of the Welfare Rights Centre, Matthew Butt further observed that the delegation of decision making powers to employment services providers would create significant problems with unlawful decision making, given that Centrelink officers are highly trained and well-resourced to make decisions under complex social security law, where employment services providers are not. See Welfare Rights Centre, ‘*Transfer of decision-making from Centrelink to employment services providers*’, Welfare Rights Centre weblog, 28 August 2014.


37. Ibid.

38. M Butt, op. cit.
**Removal of appeal rights**

Subsection 129(4) of the SSAA sets out the circumstances in which a person may not apply to the Secretary (under subsection 129(1)) for a review of a decision made under the social security law.

**Item 10** inserts new paragraph 129(4)(b), to expand the list of decisions that are not reviewable by the Secretary under subsection 129(1) to include decisions made under subsections 42SA(1) or 42SA(2A); that is, a determination by the Secretary that a participation payment is not payable to a person who has failed to attend a required appointment or participate in a required activity. Section 144 of the SSAA lists the range of decisions that cannot be reviewed by the Social Security Appeals Tribunal (SSAT). **Item 11** amends paragraph 144(fa) to include decisions made under subsections 42SA(1) or 42SA(2A), thereby ensuring that people who incur a non-payment penalty for failing to attend a required appointment or participate in a required activity cannot have this decision reviewed by the SSAT. The stated rationale for these amendments is that ‘a person could have their payment reinstated promptly by attending an appointment with their employment provider and it would be appreciably easier for them to do so than seek internal review or pursue an appeal to the Social Security Appeal Tribunal’. 39 The costs of reviewing the decisions, it is argued, would be likely to be ‘vastly disproportionate to the significance of the decision under review’. 40

Perhaps unsurprisingly, this change has been the subject of some strenuous criticism. Both the Welfare Rights Centre and the National Welfare Rights Network have objected to the removal of appeal rights in relation to compliance suspension decisions, and argued that this provision should be removed from the Bill. As they see it, appeal rights are ‘a fundamental principle of the social security system to ensure transparency and fairness’. 41 While the National Welfare Rights Network agrees that few people who have had their payments restored would be likely to pursue an appeal against their suspension decision, it goes on to argue that this does not justify the removal of their ability, and right, to do so. As the Welfare Rights Centre and National Welfare Rights Network see it, appeal rights for payment suspensions should be available as a matter of natural justice, and their removal could undermine the integrity of, and confidence in, the compliance system:

... restricting appeal rights on the basis that few people would exercise the right to appeal, or that the impact on people would be small, ignores the general unfairness. It also ignores the potential disengagement and undermining of a person’s relationship with DHS [the Department of Human Services] and employment services that can occur when a person cannot correct a decision, even if the financial loss was only temporary. 42

**Removal of activity test concessions for job seekers aged 55 years and over**

The following amendments, under Schedule 1, Part 2, are to commence from 1 July 2015.

Currently, under subsection 502A(1) of the Social Security Act, persons aged 55 years and over are who are in receipt of an activity tested income support payment (Newstart Allowance, Parenting Payment and Special Benefit) may be deemed to have satisfied the requirements of the activity test where they have in the fortnightly payment period engaged in at least 30 hours’ approved voluntary work, a combination of voluntary and paid work, or, paid work. 43 This exemption does not apply where the Secretary determines under subsection 502A(2) that employment opportunities were available to the person.

**Items 14 to 19** amend the Social Security Act to enable the Secretary to specify, through legislative instrument, a class of persons in the above category who are not to be exempt from activity test and participation requirements as a result of their participation in approved voluntary work, paid work or a combination of these. **Items 13 and 14** relate to recipients of Parenting Payment, **Items 15 and 16** relate to recipients of Newstart Allowance and **Items 17 and 18** relate to recipients of Special Benefit. In his second reading speech, Assistant Minister Hartsuyker notes that it is intended that it is job seekers aged 55 to 59 years and receiving Job Services Australia assistance who will be specified in the legislative instrument. 44 Mr Hartsuyker argues that the change is

---

40. Ibid., p. 34.
41. Welfare Rights Centre, op. cit.
required to ensure that mature age job seekers are participating in the workforce, rather than being parked on income support. It is also suggested that the change is justifiable on the grounds of equity, but on this point, see below.

Increasing the recruitment and retention of mature age people in the workforce has for some time been an objective of governments in Australia, with a number of supply- and demand-side strategies having been introduced in recent years to help achieve this goal. Mr Hartsuyker notes in his second reading speech that the Government has recently introduced a measure that provides financial incentives to employers to employ an eligible mature age worker. However, arguably more needs to be done to assist mature age job seekers, such as tackling the negative attitudes of many employers to taking on older workers and providing mature age job seekers with training relevant to the skills demanded by the 21st century labour market and economy.

In the absence of concerted and sustained efforts to tackle the many structural barriers to mature age employment participation, some commentators have argued that it would not be appropriate to do away with the different activity test arrangements that apply to job seekers aged 55 years and over. For example, the National Welfare Rights Network has pointed out that, having conducted an inquiry into Commonwealth legal barriers to older persons participating in the workforce or other productive work, the Australian Law Reform Commission (ALRC) decided against proposing any changes to the concessional activity test. In doing so, the ALRC argued that the concessional activity test requirement did not appear to be acting as a barrier to mature age participation, and that it ‘recognises the value of volunteering, not only as a potential pathway to paid employment, but also as a form of productive work in its own right’.

**Non-attendance failures**

Item 22 inserts new subdivision EC—non-attendance failures into Division 3A of Part 3 of the SSAA. This provides for a new form of failure—non-attendance failures—in addition to the existing no-show—no pay failures, connection failures, reconnection failures and serious failures. New subsection 42SC(1) provides that the Secretary may determine that a person commits a non-attendance failure where the Secretary has determined under subsection 42SA(1) that a participation payment is not payable to the person because they failed to attend an appointment required under their Employment Pathway Plan or pursuant to a notice given under subsection 63(2). (That is, where the Secretary has made a determination under section 42SA(1) based on a failure referred to in paragraph 42SA(1)(b) or (ba)). The Secretary must not determine that a person has committed a non-attendance failure under subsection 42SC if the person satisfies the Secretary that they had a reasonable excuse for their failure (new subsection 42SC(2)). New subsection 42SD provides for the Secretary to deduct a penalty for a non-attendance failure, with the Secretary to determine under new subsection 42SC(3) the instalment period in which the penalty is to be deducted, and under new subsection 42T(3A) the amount to be deducted.

As outlined above, until a person attends a rescheduled appointment their payment will remain suspended and, from 1 July 2015, they will not be back paid for those days for which they failed to attend the required appointment.

To summarise, one of the main effects of the above changes is that where a person fails to attend a required appointment—thereby committing a non-attendance failure—they will no longer receive what amounts to a warning—that is, the suspension of their payment with full back-pay when they agree to attend a rescheduled appointment. Instead, a person may be penalised on the first occasion that they miss an appointment without providing a reasonable excuse.

There has been some criticism of this change, with both the Welfare Rights Centre and the National Welfare Rights Network arguing that the existing arrangements for connection and reconnection failures, with their graduated system of penalties, should be retained for non-attendance. As they see it, penalties should only be

45. Ibid.
47. L Hartsuyker, op. cit., p. 10.
applied for second and subsequent failures. And, where penalties for non-attendance are imposed, they maintain that this should be from the date on which the person is advised of the failure, and not from the date on which the failure occurred. This would be to ensure that ‘a person is not penalised for any delay or failure in the notification process’ and help to avoid unfairness and undue hardship.50

**Delegation**

Under subsections 234(1) and (2) of the SSAA, the Secretary may delegate to an officer, the Chief Executive of Centrelink or a Departmental employee all or any of the powers under the social security law. ‘Social security law’ is defined at subsection 3(3) of the SSAA as the SSAA, the Social Security Act and any other specified Act. (That is, social security law currently only includes primary legislation.) Schedule 2, item 1 extends the Secretary’s powers of delegation to include powers under legislative instruments, including regulations, made under social security law.

**Concluding comments**

This Bill introduces tougher requirements and penalties for job seekers who fail to attend appointments with their employment service providers without reasonable excuse. Some of the changes appear to be reasonable and could potentially help to improve the attendance of job seekers at appointments. However, concerns have been raised regarding the possible impact of some of the amendments on job seekers, and the perceived need for increased safeguards in some areas has been identified. It is not clear that the removal of appeal rights for job seekers is warranted.

---
