



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



## **THE SENATE**

# **SOCIAL SECURITY LEGISLATION AMENDMENT (EMPLOYMENT SERVICES REFORM) BILL 2008**

**In Committee**

## **SPEECH**

**Wednesday, 4 February 2009**

BY AUTHORITY OF THE SENATE

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## SPEECH

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**Questioner**  
**Speaker** Xenophon, Sen Nick

**Source** Senate  
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**Responder**  
**Question No.**

**Senator XENOPHON** (South Australia) (9.39 am)—If I could make some general comments, I was of the misunderstanding that there would be an opportunity to give, in effect, a speech on the second reading again. With your indulgence, Chair, I will give an outline of my position because a lot has happened since this matter was before the Senate last December.

Previously, I did not support the second reading, and I outlined the reasons for that. Since that time I have had opportunities to have extensive discussions with the government, the opposition and the Australian Greens in relation to this. My position is that changes to the current legislation are necessary. The legislation introduced by the Howard government was, some would say, anomalous in parts and relatively inflexible, particularly in relation to the ‘three strikes and you’re out for eight weeks’ provision. There was concern about that. It has been acknowledged fairly broadly that it was anomalous that, if you were breached—as a consequence of failing to participate in a job-seeking program, for instance—and lost your benefits for eight weeks, there was no requirement to continue to participate during that eight-week period. Many saw that as an anomaly.

I also think it is important to note that the job market has changed—and that is something that no-one could have foreseen two years, a year or even six months ago—with forecasts of 300,000 Australians losing their jobs as a result of the global financial crisis. It is important that there is a greater degree of flexibility and a more nuanced approach to employment services. That is why I am grateful for the time that I have spent with the minister and his advisers. I have also had a number of good discussions with the opposition shadow and his office on this.

The principal concerns I have in relation to this legislation are as follows. Firstly, in relation to the requirement that there be six failures rather than three before there is a comprehensive compliance assessment, I believe that is simply too high a threshold. It is not reasonable for there to be six failures, six no-shows, in the course of six months before there is a comprehensive compliance assessment. I emphasise that, as I understand it, this is quite different from automatically losing your benefits for a period of eight weeks. There will be an assessment process during which a decision will be made as to whether or not you lose your benefits. I think that it is important to have that nuanced approach in the context of a worsening job market, but I also think it is unreasonable for there to have to be six failures—failures to attend job interviews or meetings with your employment provider—in a period of six months before the assessment is triggered. That simply seems quite extraordinary. To me, it does not seem to be an incentive for those that are deliberately trying to rort or play the system to stop.

There is support amongst welfare rights groups for having the threshold cutting in at three failures in a period of six months. It will also help those who have a genuine problem, who are not deliberately avoiding or shirking their responsibilities in the system but may have a mental health, substance abuse or gambling problem—those people who clearly need some help. I have been heartened to have had a major welfare rights group in this country advise my office that they believe that it would be a good thing for that comprehensive compliance assessment to be triggered at an earlier stage. I think it is important that that be considered.

As I understand it, there were discussions by the government in relation to this. I will await hearing what the minister says about this. As I understand it, the government has considered reducing the threshold from six to three. I think it will have a combined effect. Those who are deliberately avoiding their responsibilities—and there are always some, in any system, who try and rort the system—will be picked up earlier. But, to me, more importantly, those who have a mental health, substance abuse or other problem will be assessed and given a hand up earlier as a result of a comprehensive compliance assessment. Given the rising tide of employment, I think it is important that that approach be adopted.

There is also the issue of the legislative instruments. I understand the opposition has had some significant concerns with respect to giving this broad discretion, if you like, to the government, to the department, to deal with these legislative instruments. My concern has principally been one of scrutiny. As I understand it—I will await the minister’s undertakings in this regard—in relation to the changes to the participation regime there will be at least two months notice required for those instruments to be presented so that the Senate has an opportunity

to see them and to scrutinise them before they are due to come into effect—because they will be disallowable instruments.

The other aspect of that is that my preference would be that there be enshrined in legislation a legislative instrument that does not come into force until there has been an opportunity of at least, say, six sitting days, to ensure that it is appropriately scrutinised. As I understand it, that is not the government's position—they say that would be relatively unprecedented, and we will hear from the minister on that shortly—but my view is that it is important that there be a degree of scrutiny. I look forward to the government's undertakings in that regard.

The final matter that I have to deal with relates to the issue of reviews. There will be significant changes as a result of what the government is proposing with respect to the way that job seekers are treated in terms of sanctions and the like. I agree that there is certainly need for change, particularly given the inflexibility of some of the measures of the previous government, and also acknowledging that the job market has significantly worsened since the previous set of rules were put in place. That is why I will be moving an amendment, which hopefully will be circulated shortly, to the effect that there be a comprehensive review. I understand the Greens will be moving for a review. I think it is important that there be a review with respect to these changes, which also broadly looks at the interface between state and federal agencies. A concern has been put to me by welfare and other groups that there are people who fall through the cracks. They fall through the cracks because of, for instance, substance abuse or mental health problems, and there is still work to be done in relation to the interface between state and federal government agencies. I agree that there have to be changes, but it is appropriate that there be a thorough review of these changes, which are very significant changes, so that we can see how the system is working and how it can be improved. That is essentially the thrust of my amendment.

In summary, if people are wilfully and deliberately avoiding work then we need to be firm. I think that going from six to three failures in a six-month period is fairer. That does not mean that someone will lose their benefits; it simply means there will be a comprehensive compliance assessment. If, as I suspect, there will be many cases of people not complying because of their individual circumstances, then I think it is important that there be a process in place to assist those people. I would like to think that a review would be an integral part of ensuring that this legislation is appropriately scrutinised by an independent panel with expertise in these matters, which would report to the parliament in the latter part of next year. I think that would be a fair and robust way of dealing with these important changes. That is a summary of my position, and I look forward to the committee deliberating on this matter.