

## SUBMISSION TO SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

### Social Services Legislation Amendment (Welfare Reform) Bill 2017



Presented by:

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## About NESA

Established in 1997, the National Employment Services Association (NESA) is the peak body for Australian employment services. NESA is dedicated to creating opportunity for all through employment. Our mission is to lead a sustainable, effective and diverse employment and related services sector.

NESA is the peak body for all of Australia's world renowned contracted employment services which provide labour market assistance to improve opportunities and outcomes for disadvantaged job seekers, and employers. Our members include not-for-profit and private organisations that have extensive coverage of jobactive, Disability Employment Services (DES), the Community Development Programme (CDP), and other complementary programmes such as Transition to Work (TTW).

NESA membership includes community, not-for profit and private organisations delivering services across the breadth of Australian employment and related services. NESAs representation reflects our unique perspective on the functioning and development of the broader employment services policy and programme framework as well as in-depth understanding of individual programmes and operating environments.

## Background

Australians value and support the social safety net provided through our Social Security mechanisms and their contribution to a cohesive and civil society. There is also clear support for the principle that individuals should take responsibility for undertaking steps to improve their circumstances and not be dependent on the welfare system to the extent they have the capacity to do so.

The Social Services Legislation Amendment (Welfare Reform) Bill 2017 represents comprehensive reform of Australia's working-age welfare payments with the intent of making the system simpler, more sustainable, and focussed on supporting people from welfare into employment. Measures within the Bill aim to improve the integrity of the welfare system and ensuring that recipients receive the necessary support and incentives to address barriers to employment, to look for work and accept a suitable job to benefit the individual, their families, the wider community and the Australian economy.

NESA welcomes the opportunity to provide feedback to the Inquiry into Social Services Legislation Amendment (Welfare Reform) Bill 2017. Providers of employment and related services are an important stakeholder in the job seeker compliance framework and NESAs has consulted with its membership in the preparation of this submission.

## **Schedule 1 - Creation of the Job Seeker Payment**

There is a general view that simplification of the number of payments currently available into a single job seeker payment for working age Australians from 20 March 2020 will make the system more coherent. Transition of recipients of these payments to arrangements consistent with Newstart allowance rules and rates should be undertaken with care to ensure the unique circumstance and needs of each existing payment cohort is reflected in the reformed system. This includes ensuring these recipients continue to receive support consistent with their needs and can meet the costs of job search maintaining ancillary payments and concession arrangements, such as pharmaceutical allowance requires consideration.

In addition, these arrangements will result in more people referred to employment services at a time when they are experiencing circumstances that prevent their active participation, potentially for long periods. As such, employment services are likely to experience increased costs associated with administration of caseloads with a higher proportion of suspended and exempt job seekers.

### ***NESA recommends***

To avoid disadvantage the rules and instruments established for the job seeker payment adequately reflect the needs and previous arrangements of recipients.

Revised arrangements are accounted for in the program design, performance and payment structures of employment services from 2020 to ensure that employment services can continue to operate sustainably and effectively in its objectives to transition people from welfare to work.

## **Schedule 9 – Changes to the activity test for persons aged 55 to 59**

The change to activity tests for people aged 55-59 will make requirements for this cohort consistent with those for younger job seekers.

At present where this cohort are undertaking volunteering as an approved activity they are deemed to be meeting all requirements and cannot be compelled to job search or attend appointments with employment service providers. The employment services sector values volunteering as a means to contribute to community, social inclusion and strengthening an individual's wellbeing and employability. However, for many in this cohort, often disillusioned and despondent about the prospects of finding employment as a mature age worker, volunteering has become an alternative destination to employment.

### ***NESA recommends***

Arrangements should enable continuation of volunteering alongside other employment assistance measures; and

Implementation of broader strategies to promote workforce diversity and inclusion of mature age workers.

## **Schedule 10 - Changes to start day provisions**

The sector is generally of the view that this change will strengthen current arrangements and address the rate of failure to attend initial appointments. Currently providers are required to have sufficient appointments available in the online ESS diary, shared with DHS, to enable all job seekers to have access to an initial appointment within 48 hours and a proportion elect to take appointments with providers on the same day as the first contact with DHS. However, moving forward job seekers should not be penalised where a lack of available and reasonably accessible appointments prevents their prompt commencement e.g. in rural areas where employment services are provided on a visiting or part time basis. Additionally, the start date should not be affected where job seekers have grounds for exemption or suspension on application e.g. bereavement or sickness, which will become more prevalent from 2020 with the proposed single job seeker payment.

### ***NESA recommends***

Arrangements include protection for job seekers where a lack of available and reasonably accessible appointments or reasonable grounds prevents their prompt commencement with employment services.

## **Schedule 11 – Intent to Claim**

This schedule changes the start date that social security claimants will receive payments from the date of first contact with the Department of Human Services (DHS), to the date they provide all necessary material for assessment of the claim. While respecting government and community expectations that individuals take personal responsibility for their own affairs, NESA considers this measure unreasonable. Citizens are not generally aware of the evidentiary requirements to support a claim for income support prior to receiving advice from the DHS in relation to their circumstance. Whilst these evidentiary requirements designed to protect the integrity of the welfare system are necessary they often require claimants to source multiple documents including from third parties. While unable to source data regarding the proportion of claimants who complete their application on first contact with DHS, NESA anticipates the proposed change will affect a large proportion of people to some degree, with the greatest impact of this measure felt by those most disadvantaged and/or in crisis circumstance. Current intent to claim provisions provide a balance of ensuring the integrity of the social safety net, individual responsibility and accommodation of diverse circumstance further strengthened by the proposed change outlined in schedule 10.

***NESA recommends maintaining current intent to claim provisions.***

## **Schedule 12 – Establishment of a drug testing trial**

The explanatory memorandum states:

***“Substance abuse is a major barrier to social and economic participation and is not consistent with community expectations around receiving taxpayer funded welfare payments. The aim of the trial is to improve a recipient’s capacity to find employment or participate in education or training by identifying people with drug use issues and assisting them to undertake treatment. The trial will test the effectiveness of decreasing substance abuse through random drug testing, in an effort to improve employment outcomes for trial participants”.***

The employment services sector acknowledges that substance abuse is a major barrier to social and economic participation. However, there is no evidence that supports that such a trial is likely to achieve the objective of improving a recipient’s capacity to find employment, participate in education or training or will not contribute to further harm of this vulnerable group.

Embarking on a trial in the absence of evidence is contrary to the concept of harm reduction and the continued commitment to evidence-based and evidence-informed practice outlined in the National Drug Strategy 2010–2015 and draft 2016-2025.

While relating specifically to treatment of offenders within the justice system, the article ‘Legally coerced treatment for drug using offenders: ethical and policy issues’ (Hall & Lucke NSW Bureau of Crime Statistics and Research) found:

*“It is also necessary to avoid making trial programs of coerced drug treatment standard practice in the absence of rigorous evaluations of their safety, effectiveness and cost-effectiveness.”*

The Bill proposes recipients returning two positive results will be required to undergo a medical, psychiatric or psychological examination in order to qualify for income support. There is concern that the trial may result in inappropriate referrals to an already under resourced and overburdened Alcohol and Drug (AOD) Treatment system. While the sector welcomes provisions for expanding the capacity of employment services to use the Employment Fund, to include delivery or purchase of alcohol and drug treatments, there is an urgent need for greater investment in treatment options. It is also noted, the proportion of substance users who have a dual diagnosis is high and equally improved access to mental health treatment services is required. Monitoring of the level of investment directed from the Employment Fund to AOD to confirm this investment is not at the detriment of other supports required to assist job seekers transition to employment. Ideally, if the trial is to proceed an additional credit should go to the Employment Fund for each job seeker identified as requiring assistance.

Notwithstanding hardship provisions, requiring recipients to repay costs of testing if a recipient has positive results to a second or any subsequent test will only exacerbate disadvantage. There is a concern that people may be encouraged to undertake unsafe drug withdrawal to remain on income support. Substance dependency often requires appropriately managed gradual withdrawal or residential detoxification. NESAs notes that access to inpatient/residential treatment is limited, waiting lists are long and private options

are expensive. As such, many recipients may return a second or subsequent positive test even where they are participating or waiting to participate in AOD treatment.

Linking AOD treatment to income support eligibility has a high potential to encourage people affected withdrawing from the social security safety net and associated support resulting in further detachment with the labour market, increased pressure on family, community and interaction with the justice system all of which are contrary to the stated intent of the trial.

The implementation of such a trial is likely to perpetuate stereotypes and negative perceptions of welfare recipients generally creating further barriers to social and economic inclusion of job seekers, beyond those targeted by the trial. The sector is concerned of how receptive employers will be to candidates from the nominated drug trial areas once branded as areas of high use. This could result in worsening circumstances in areas already experiencing persistent disadvantage and workforce exclusion, again beyond the target group. There are also significant concerns relating to civil rights including privacy provisions to implement this initiative.

### ***NESA recommends***

The trial does not proceed until there is greater evidence for the efficacy of this policy and appropriate provisions for access to treatment services.

Income support recipients should not have to pay for any drug testing.

That any trial includes additional investment in the Employment Fund and similar arrangements for other employment services without access to the Employment Fund, such as DES, to support interventions.

### **Schedule 13 – Removal of Exemptions for Drug or Alcohol Dependence and Schedule 14 – Changes to Reasonable Excuse**

Income support recipients of activity-tested payments, such as Newstart Allowance, may be exempt from the activity test and participation requirements for many acceptable reasons. These exemptions include temporary incapacity due to illness or injury or there are circumstances out of the persons control such as homelessness that reasonably make it difficult to meet obligations. The Bill proposes removal of current exemptions related to drug or alcohol abuse circumstance where the income support recipient's circumstances deemed directly attributable to the person's drug or alcohol misuse/abuse. This change is likely to result in decreased disclosure of substance use and therefore reduced potential to link people with the supports they need.

There is considerable concern for how directly, wholly or predominantly attributable to alcohol or drug misuse/abuse, will be assessed. The explanatory memorandum uses an example of a situation a person evicted from their home where this is due to drug or alcohol misuse resulting in a rejected application for exemption. In such circumstance regardless of any contributing role of alcohol or drug misuse, the individual will face significant barriers to participation and will be under enormous stress that is not conducive to referral to

employment. In essence, this may set people up to fail and be a catalyst for more significant individual and social harm.

The proposal is to remove exemptions for AOD reasons on more than one occasion even where supported by medical evidence. AOD treatments require time and often involve multiple attempts at rehabilitation. In particular, NESAs notes the long-standing challenge of surrounding access to treatment of people with dual diagnosis.

Health Victoria states ***“Co-occurring substance use is common rather than exceptional among people with serious mental health problems and disorders. Population health research shows high rates (up to 50 per cent) of alcohol and drug use among people with severe mental health problems”***. Many members of the community while acknowledging their substance dependency may not have insight into their mental health increasing their vulnerability under this measure.

The following statement by Health Victoria serves as a caution for applying a single set of rules to a diverse cohort of people with substance use issues: Service responses need to take into account the different and more complex impacts of dual diagnosis. Research shows that compared with people with a single disorder (a mental illness or a substance use disorder), people with dual diagnosis have higher rates of:

- severe illness course and relapse
- violence, suicidal behaviour and suicide
- infections and physical health problems
- social isolation and family/carer distress
- service use
- anti-social behaviour and incarceration
- homelessness

***NESA recommends not implementing the proposed removal of AOD as the basis for exemption.***

### **Schedule 15 – Targeted compliance framework**

The new compliance framework represents a significant shift in the management of job seeker requirements. Very preliminary consultation with the employment services sector has only recently commenced and much of the detail is still unknown. As we understand it, if implemented this initiative is the first time that providers will have a direct role in assessing reasonable excuse and applying demerit points. While providers have had a role recording failures to participate and have had a level of discretion in assessing reasonable excuse, participation reports have always been reviewed and final outcomes determined by DHS. Being engaged in but one-step away from compliance function has assisted providers manage relationships with job seekers (opposed to the enforcement role).

The sector understands that the proposal will involve employment service providers applying demerit points where a job seeker fails to meet requirements and there is no reasonable

excuse. After a job seeker incurs three demerits providers will be required to assess the job seekers capability and requirements with the opportunity to consider any previously undisclosed circumstance. Demerits will return to zero, if the provider finds they are unable to meet their obligations and the job seeker and they receive referral to a new stream or program following an Employment Services Assessment.

At this time, there are no detailed guidelines available regarding issues such as documentary evidence requirements to support this process. DHS may implement a Change of Circumstance on job seeker declaration, to trigger an Employment Services Assessment. Providers are required to obtain documentary evidence in order to trigger an Employment Services Assessment and assist job seekers to receive services more appropriate to their needs. If the same level of documentary evidence is required there are significant concerns regarding the time and effort that diverted to compliance activity over servicing and risks to vulnerable job seekers unable to substantiate their claims. The sector has not received advice that any additional resources will be available with the transfer of these responsibilities, which have previously been the domain of DHS. NESAs also notes that there have been significant issues in relation to timely access to Employment Services Assessments.

DHS will not have a role until job seekers accumulate four demerits at which point they will conduct a further capability assessment. If DHS concurs with the employment service provider, in finding the job seeker has capability to meet their obligations, they will be subject to significant financial penalties. There is also uncertainty whether DHS will review earlier demerits to review fair application leading to capability assessment and how DHS will consult with providers throughout the determination process to ensure the integrity of the proposed system.

***NESA recommends, the proposed changes should be implemented on the following provisions:***

The Commonwealth provides additional investment in training to ensure consistent and fair application of demerit points and conduct of capability assessments by the employment services sector.

There is a review of additional service requirements and impost on employment services program arrangements and such requirements separately funded, so as not to reduce the service time devoted to transitioning people to sustainable employment. This should include any increase in attendance at the Administrative Appeals Tribunal.

The sector should be significantly engaged in the development of guidelines to operationalise policies.

That data collection and evaluation is transparent to assess the impacts of reform including unintended consequences.



**Additional comments – Encompassing Drug testing trial, removal of exemptions for AOD and targeted compliance framework.**

The sector has concerns that revised arrangement will place already vulnerable job seekers under stress and there is a potential for an increase in aggressive behaviour. The sector notes they consider existing procedures for dealing with serious incidents insufficient and the proposed reforms are likely to exacerbate issues. Employment services providers do not have as much discretion as DHS in relation to service arrangements e.g. capacity to refuse to service a job seeker despite their moral and legal obligations to maintain the health and safety of their staff and other persons on their site. To classify as a serious incident lodgement of a police report is required. There are many reasons why providers do not wish to report incidents to police including those involving job seekers with known complex issues and circumstance. Risks to the fair and equitable implementation of the compliance framework relating to serious incidents need to be addressed e.g. intimidating behaviour.

There are consultations occurring with the Department of Employment regarding serious incidents however, providers of employment services identify issues across programs administered by various portfolios including Department of Social Security and Prime Minister and Cabinet. The sector recommends:

- Sharing data on serious incidents across portfolios,
- Reviewing current procedures for reporting and responding to serious incidents by various agencies and Departments; and
- Establishing a taskforce with representation from all key stakeholders to achieve reduction in serious incidents and improved responses to serious incidents.