

DSS – DES reform

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27 February 2024

Review of Disability Employment Services

About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:

- Strengthens the effectiveness and integrity of our social security system;
- Educates the community; and
- Improves people’s lives by reducing poverty and inequality.

Due to the specific nature of our expertise, our response to this review is concentrated only on the consultation question on the Mutual Obligation framework for Disability Employment Services.

EJA understands that broader mutual obligation policy sits with DEWR and that the changes recommended by the Workforce Australia (WfA) inquiry are still being considered by the Government. Nevertheless, the issues with the mutual obligation framework acknowledged during the review, and the recommendations it made, are relevant to these consultation questions. This is the case because of the adverse effects on self-efficacy¹ of requiring people to sign job plans, particularly cookie cutter job plans, that consist of default requirements that do not reflect the goals of the participants.

EJA believes the mutual obligation framework for DES is deeply flawed and inconsistent with Australia’s obligations under the UN Convention on the Rights of People with Disabilities and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties and conventions require the Government to ensure that people with disabilities are not harmed due to discrimination and that they are provided with an adequate standard of living. The use of

sanctions such as payment suspensions and financial penalties under the Targeted Compliance Framework is inconsistent with the aims of these human rights principles.

It is also important that DES providers offer services that are valued and that activities to prepare for employment genuinely reflect a person's goals and aspirations, relative to the opportunities available in the labour market.

Consultation question on Mutual Obligation

The Select Committee on Workforce Australia called for greater flexibility and tailoring of mutual obligations, with a focus on participating meaningfully in services.

This submission addresses the following question posed by the Select Committee: If it were possible to simplify requirements so participants meet their obligations by engaging effectively with a provider in preparing for, seeking and undertaking employment:

- What benefits would this bring to participants and administration?
- Are there any unintended consequences, for whom and why is that important?
- Would the option to move to specific requirements – similar to current arrangements – be appropriate where a participant wasn't engaging effectively?

1. What benefits would this bring to participants and administration?

The main Mutual Obligation requirements for DES participants are to attend appointments with providers and report a minimum of 12 job searches per month. In some cases, participation in an activity may also form part of a job plan but there are limits to the extent to which DES participants can be required to undertake activities such as Work for the Dole.

The latest Target Compliance Framework (TCF) data for January 2024 for DESⁱⁱ shows that payment suspensions affected 20 per cent of the 129,000 participants with mutual obligations, while threat of suspension through the 2-day resolution period affected a total of 27 per cent of participants. Fifty per cent of these suspensions were for not attending provider appointments, and the other 50 per cent were automated suspensions when the participant has not reported the required number of job searches.

The high rate of payment suspensions highlights systemic issues with the current system.

It is important to remember that the criteria for DES eligibility is having a diagnosed disability and a partial capacity to work. Although 75% of DES participants are on job seeker or youth allowance payments, 56% of these have been unemployed for three years or longerⁱⁱⁱ, indicating the significant challenges they face finding and securing employment.

Many of these DES participants are on job seeker payments because they have not met the unrealistically high requirements for DSP eligibility and/or are mature aged. They have not chosen to be in DES or to have mutual obligation requirements and, as reported to the WfA inquiry, they experience the DES system as coercive.

The Human Rights of people with disability are affected by the use of payment suspensions and payment penalties. As with the ParentsNext program, there are no circumstances in which it is a proportionate measure to deny a person with disability the right to social security.

Further, automated payment suspensions are procedurally unfair under administrative law principles, which require that a person be given an opportunity to provide reasons for not being

able to complete an activity before a decision to suspend is made. While guidelines allow for the provision of a 'reasonable excuse' prior to the due date of the requirement, this provision is not realistically accessible or available to people due to the unpredictable nature of life events. Further, people with disability surviving on sub-poverty level payments such as jobseeker and youth allowance payments, are already experiencing high levels of stress and precarious living circumstances.

Recommendations: Implement the Workforce Australia inquiry Recommendations 57 and 62 and bring forward reforms to the jobseeker compliance system in consultation with people directly affected, peak bodies and experts, to develop a better model.

Recommendation: Take urgent action to reduce the number of payment suspensions applied automatically to participants in employment programs and pause payment suspensions until this has been done.

Recommendation: Return responsibility for jobseeker compliance administration to public servants who are trained in administrative law.

Recommendation: Guarantee that payment suspensions will only be used as a last resort when all other forms of engagement have been exhausted.

Recommendation: Ensure the compliance framework and participation requirements are legislatively based under social security law, providing clear avenues for appeal.

Recommendation: Shift away from punitive measures and develop a system based on incentives rather than punishment.

2. Would the option to move to specific requirements – similar to current arrangements – be appropriate where a participant wasn't engaging effectively?

The use of more prescriptive requirements such as mandating levels of job search, like the current 12 per month, is not appropriate in DES. There is no evidence that either prescriptive requirements or compliance measures are consistent with best practice in labour market programs or with Australia's human rights obligations for people with disability. Job plans should be individually tailored.

If a DES participant is not engaging with employment services, this may point to issues with either the quality of the services being provided or the appropriateness of the job plan. Further, EJA is aware that DES providers have been setting appointments too frequently (i.e. fortnightly) without regard to participants' particular circumstances or preferences. These frequent contacts might be beneficial in limited circumstances, for example when a participant requests them, but they should not be used as measures to push people off payments quickly by taking the first available job, whether or not the job is suitable or manageable.

Recommendation: Bring forward the WfA inquiry recommendation 40 in relation to Tailored Job Plans.

Recommendation: Bring forward the WfA inquiry recommendation 62 regarding the development of a shared accountability framework.

Further recommendations from the WfA inquiry

The WfA inquiry made other important observations about the mutual obligation framework for people who are long term unemployed particularly in relation to the impact of disability on

duration of unemployment. The WfA inquiry also recommended improving access to sickness and DSP for people long term unemployed to prevent them from being subject to unrealistic requirements. EJA is extremely concerned about the difficulties people face when applying and qualifying for DSP, and the challenges people face managing mutual obligations and associated reporting requirements though extended or repeated bouts of illness. For this reason, these recommendations of the WfA inquiry should be brought forward.

Recommendation: Bring forward Recommendation 32 and 33 of the WFA inquiry in relation to reinstating Sickness Allowance and granted a Disability Support Pension for people who are long term unemployed

Further EJA recommendations

Digital servicing

Due to the fact that participation in employment services now requires people to be online and have a device, it is important the people can afford to be online and receive the training they need, or to opt out of digital services when they are not suitable for, or available to, them.

Recommendation: Introduce a digital allowance for people receiving income support payments to assist them with purchasing phones/data – this could be an increase/or expansion of existing Telephone Allowance to cover the cost of basic internet plans.

Recommendation: Provide DES participants clear and accessible options to opt-out of digital services, including online platforms for uploading job search requirements and monitoring compliance through the TCF.

Recommendation: Provide training to DES participants to use online interfaces when they request it.

Contact

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ⁱ See for example Sykes (2023) who used self-determination to explore the impact of sanctions and found that they limited self-efficacy and were counterproductive to motivation: Sykes, C. (2023) "How Australia's employment services system fails jobseekers: Insights from self-determination theory", *The Australian Journal of Labour Economics*, 26(1), pp. 84–113. Available at: https://ajle.org/index.php/ajle_home/article/view/162 (Accessed: 20 October 2023).

ⁱⁱ DES TCF Data January 2024

ⁱⁱⁱ DES monthly data January 2024