

Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness
A joint initiative of the Public Interest Law Clearing House Inc
and the Public Interest Advocacy Centre Ltd



20 June 2008

The Hon Brendan O'Connor MHR
Minister for Employment Participation
Level 2, East Wing
4 Treasury Place
MELBOURNE VIC 3000

Dear Minister O'Connor

The Future of Employment Services in Australia – Discussion Paper

The PILCH Homeless Persons' Legal Clinic (Vic) (**HPLC**) and the Homeless Persons' Legal Service (NSW) (**HPLS**) welcome the Federal Government's proposed changes to the Welfare to Work legislation as detailed in the discussion paper *The Future of Employment Services in Australia (the Discussion Paper)*.

The HPLC and HPLS particularly support the Government's proposed amendments to the ineffective and harsh non-compliance penalty scheme in the Welfare to Work legislation (*Social Security Act 1991* (Cth) (**the Act**)).¹ This legislation detrimentally impacts upon disadvantaged community members who face the risk of homelessness as a result of its application. In effect, the legislation operates as punishment for those who are already homeless.

About the HPLC

The HPLC was established in 2001 in response to the great unmet need for targeted legal services for people experiencing homelessness. Legal services are provided by volunteer lawyers from private law firms and legal departments at eleven homelessness assistance services in and around Melbourne. Since its establishment, the HPLC has assisted over 3,000 people in a range of areas. The HPLC also undertakes significant community education, public policy advocacy and law reform work to promote and protect the right to housing and other fundamental human rights.

About the HPLS

HPLS was established in May 2004 and operates on a similar model to the HPLC. It now has nine clinics staffed by lawyers from nine private law firms and the Legal Aid Commission of NSW. In its four years of operation, over 2,000 clients have been assisted. The HPLS also undertakes community education and policy and law reform work as part of its aspiration to reduce the barriers to people exiting homelessness.

¹ Via the amending legislation *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* (Cth).

Homelessness

We are encouraged by the attention that the issue of homelessness has received from the Australian Labor Party since being elected to government. We welcome a Government that is more understanding and compassionate towards those who are marginalised and disadvantaged. We further commend the Rudd Government on delivering the Green Paper on homelessness, which will lead to a long-term Government policy document in the form of a White Paper.

About the Welfare to Work Scheme

The Welfare to Work legislation brought in a raft of punitive reforms for those who are unable to meet the 'participation obligations' under the Act. The harshest reform to the Act was the social security compliance regimes. This regime states that where a job seeker fails to meet a participation requirement, such as failing to attend a training course, the job-seeker will have their payment suspended until they comply. Where a person has failed to meet a participation requirement three times, their payments will be cut off for a period of eight weeks and the person will receive no income whatsoever during this time. The job seeker is not required to contact Centrelink or their Job Network Provider until the conclusion of the eight-week period thereby interrupting potential job training and employment opportunities.

The HPLC and HPLS consider the negative impact of the penalty regime to be contrary to Australia's human rights obligations. In particular, the punitive penalty regime can breach a person's human rights to social security, adequate standard of living and right of access to the highest standard of physical and mental health as found in the *International Covenant on Economic, Social and Cultural Rights*, which was ratified by Australia in 1975.²

The negative ramifications of the penalty regime are revealed in a survey conducted by the Salvation Army in 2001 demonstrating that up to 84 per cent of people who breached the compliance regime were unable to afford food or medication, 63 per cent were unable to pay bills, and up to 16.5 per cent might have been rendered homeless as a result of the breach penalty imposed.³ Furthermore, 84 per cent of homeless people surveyed at a recent consumer forum conducted by the HPLC in Melbourne considered that the level of social security they received was inadequate to meet their basic needs.⁴ Thus, the effect of a compliance regime that withholds welfare payments to this extent perpetuates a cycle of poverty and homelessness for severely disadvantaged members of our community who are forced to focus on surviving rather than securing employment and getting their lives back on track.

Proposed Reforms

The HPLC and HPLS support the Government's recommendations regarding compliance in the Discussion Paper. As noted in the Discussion Paper, the regime has been unsuccessful and has failed to prevent non-compliance amongst job-seekers. Additionally, the HPLC and HPLS agree that the compliance regime is unproductive as it does not necessitate a job seeker's continuing contact with a Job Network Provider or Centrelink. Finally, and most importantly, the HPLC and HPLS agree that ceasing welfare payments has a serious and alarming impact on those who are disadvantaged or at risk of homelessness.⁵ The HPLC and HPLS also argue that the compliance regime breaches the fundamental human rights of social security recipients.

The HPLC and HPLS believes that a 'No Show, No Pay' compliance model combined with 'Participation Reports' is a more effective way to encourage job seekers to participate in training and other employment opportunities. The HPLC and HPLS believes that the inception of a comprehensive compliance assessment scheme to assess the adequacy of a penalty after receiving a number of Participation Reports is a more flexible, effective and understanding approach more consistent with a human rights framework.

² Articles 9, 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights*.

³ The Salvation Army Australia, Southern Territory, *Stepping into the Breach: A Report on Centrelink Breaching and Emergency Relief* (2001).

⁴ Statistics and statements from questionnaires undertaken at the Melbourne Consumer Forum conducted by the HPLC, Melbourne Town Hall, August 2006.

⁵ Commonwealth Government of Australia, *The Future of Employment Services in Australia – A Discussion Paper* (2008) 22.

The compliance assessment scheme will enable job seekers to more readily access essential welfare payments and services whilst encouraging people to gain employment skills and experience job opportunities whilst people live in dignity with access to basic necessities.

The HPLC and HPLS believe that the comprehensive compliance assessment scheme must be developed to take account of the special and often multiple needs of disadvantaged members of our community in attending and accessing appropriate Job Network Services. The assessment must provide a flexible and personal approach in understanding the various problems that may impact on job seekers in accessing employment services and meeting their commitments. The assessment must also be linked to support services and networks to assist a job seeker in addressing personal issues that may impede employment and training opportunities under the government scheme.

The fast reconnection of job seekers to employment services is one way to identify the multifarious barriers that job seekers may face. By ensuring that job seekers make up their Job Network Provider commitments in a prompt fashion so as not to impact their welfare payments or receive a Participation Report is commendable and reveals the government's recognition that rigid penalties are ineffective in assisting job seekers to receive employment education, skills and opportunities.

However, the HPLC and HPLS are very concerned about the retention and continued use of the eight-week penalty regime. As noted above, the eight-week penalty regime may have devastating effects for people who are entirely reliant on welfare payments to pay for their basic living necessities. The Welfare to Work scheme should be focused on assisting job seekers in resolving personal issues and problems in order for people to engage within the community and employment system and should not cut off essential welfare payments. The HPLC and HPLS consider that the proposed comprehensive compliance assessment schemes should never recommend ceasing a job seeker's welfare payments for any period of time.

Response to Discussion point 14

Remembering that the comprehensive compliance assessment is an opportunity to identify barriers or service options, what number of Participation Reports submitted in a particular time-frame should trigger an assessment?

Should the trigger be the same for rapid reconnection failures as for 'No show, no pay' failures?

The HPLC and HPLS believes that a high number of Participation Reports should be submitted before a job seeker is assessed and that Centrelink consider any personal barriers to a job seeker attending employment opportunities or training. Additionally, where there is rapid reconnection for job seekers who do not attend their Job Network Provider commitments, the Participation Report should be waived so as to not negatively affect the job seeker who is attempting to remedy their lack of attendance and meet their employment service commitments by reengaging with the system and attending new appointments.

The Job Network Provider and Centrelink must be aware of the personal issues that face disadvantaged job seekers within our community and provide a flexible and personal approach to ascertaining why people are facing hardship and unable to meet their obligations in the Welfare to Work scheme and attempting to resolve these personal issues. As shown by the current penalty regime, a uniform and rigid penalty scheme that reprimands job seekers without consideration of personal issues and barriers not only breaches human rights but has been unsuccessful in maintaining and increasing compliance.

Response to Discussion point 15

What should happen if the job-seeker reengages through participation in an intensive activity but then again fails to meet their requirements (a persistent no-show)? Should payment be lost on a 'No show, No pay' basis or should the job-seeker, at some point, become fully precluded from income support for a period?

The HPLC and HPLS strongly believe that no job-seeker should be fully precluded from income support for any period. As discussed above, lack of welfare entitlements can have a devastating impact on the disadvantaged members of the community who may be at risk of homelessness as a result of not receiving welfare payments. Additionally, not providing welfare entitlements to underprivileged job seekers breaches the government's obligations to protect, promote and fulfill a person's fundamental human rights.

The HPLC and HPLS believe that much like providing comprehensive compliance assessments after a job seeker has received a number of Participation Reports and/or undertaken rapid reconnection with services, there should be a 'critical assessment' for job seekers who are persistently not meeting their job seeker requirements. This critical assessment should evaluate the personal barriers and service faults that have impeded the job seeker in complying with their employment service obligations and attempt to assist the job seeker in resolving these issues in order to reengage with the employment network and Centrelink. Recognition of the multiple and serious personal issues that many job-seekers face is vital to the success of the Welfare to Work scheme and will allow an increasingly flexible and more effective compliance regime.

Conclusion

The HPLC and HPLS commend the Federal Government in its fairer approach to the Welfare to Work compliance scheme. The Government's new approach encourages job seekers to attend employment training and job opportunities in a framework that recognises that many job seekers may face serious social and personal hardships within their lives. However, the HPLC and HPLS believe that the continuation of the eight-week penalty regime for persistent non-compliers continues to be an overly harsh penalty that will be detrimental to the lives of many Australians, particularly those who are homeless or at risk of homelessness, and should be abolished.

Yours sincerely

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CC: The Hon Tanya Plibersek, Minister for Housing