

# Do Mutual Obligation Breach Penalties Coerce Compliance with Government Expectations?

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Simon Schooneveldt

## **Abstract**

A Brisbane survey was conducted to examine some of the consequences of Centrelink breach penalties when applied to unemployment welfare recipients under the Howard Coalition Government's ideology of Mutual Obligation. Fifty-six such recipients responded to the author's survey by completing a questionnaire about their experiences after receiving one or more breach penalties. The consequences of being breached for those respondents are contrasted with the Coalition Government's stated expectations for its Mutual Obligation driven breach penalty system. The background to the rise of Mutual Obligation as an ideology and the elevated incidence of breach penalties are briefly discussed, along with the report of the survey findings. Interestingly, two surprise findings are given specific focus as they offer new insight.

## **Mr Simon Schooneveldt**

DipAppSc(Counselling), BSocSc(HumServ), GradDipSocSc, MSocSc(HumServ). After 25 years of commercial corporate management, Simon developed and co-ordinated programs for supporting people with psychiatric disabilities to gain and maintain open employment for the Department of Human Services and Health (Cth.). He is currently Vice-President of the Mental Health Association of Qld. Inc. (MHAQ) and has research interests in disability unemployment and social justice. He is responsible for the Australian Basic Income Guarantee (BIGA) website, lectures in the School of Humanities and Human Services at Queensland University of Technology (QUT) and is completing his PhD at QUT's Centre for Social Change Research.  
[s.schooneveldt@qut.edu.au](mailto:s.schooneveldt@qut.edu.au)

## Introduction

The large majority of people who receive breach penalties from Centrelink are unemployed, in receipt of welfare payments under either the New Start Allowance program or the Youth Allowance program. These programs include Activity Test conditions with which beneficiaries must comply in order to avoid incurring breach penalties. Central to the whole issue of breaching is the political ideology of Mutual Obligation (Kinnear 2000) and entrenched high levels of long-term unemployment (Borland 2000).

The author describes the escalating Mutual Obligation regime implemented by the Howard Coalition Government and defines and quantifies breach penalties. Some findings from the author's Brisbane survey are presented, evaluated and compared with the Howard Government's stated *expectations* for its Mutual Obligation policy. Two unexpected findings are highlighted as they provide further new insight into consequences of the breaching process.

New groups of welfare recipients, such as Disability Support Pensioners and Single Mothers are now intended to be included in the Mutual Obligation regime, although the Senate currently continues to reject the Bill to include people with disability. Some precognition of the future situation for such people, if they do come under Mutual Obligation, can be glimpsed from the indications reported by the unemployed welfare recipients who responded to the Brisbane survey.

## Background to the ascendancy of Mutual Obligation

Central to discussion of Australia's income support welfare system is an understanding of the importance of increasingly higher levels of long term unemployment (Edwards et al. 2001) and the now entrenched political ideology of Mutual Obligation with its coercive breach penalty system (Hartman 2001). In 1974 the Australian rate of unemployment was less than 3 per cent (Watts 2001: 3). The economic upturns in the late 1980's and late 1990's were not enough to restore that low unemployment level, the best achieved was 5.4 per cent in November 1989 (Borland 2000: 1).

In September 2003 unemployment stood officially at 5.8 per cent (ABS 2003a). However, when under-employed people, discouraged job-seekers and disguised unemployed people are taken into account, the 'real level of unemployment' is in the order of 12 to 18 per cent of the working age population (Tomlinson 2003: 1). Carlson and Mitchell (2002: 50) calculated that Australia 'now wastes over 12 per cent of its available labour resources'.

With high unemployment levels came a rise in the number of people who are long-term unemployed. Burgess et al. (1998: 3) reported the average duration of unemployment 'rose from three weeks in 1966...to 50.5 weeks in 1998'. The 'one-year' long-term unemployed now runs at 57 per cent of all benefit recipients (Saunders & Tsumori 2003: 3). However, of over 600,000 people currently receiving unemployment benefits, Ziguras et al. (2003) reported that the numbers of long-term unemployed people who exceeded two years of unemployment, (rather than one year) now total almost half of

all unemployment beneficiaries. The Department of Family and Community Services confirmed the figure at 281,289 job seekers (Courier-Mail 2003).

Increasingly, conditions of employment have fragmented away from permanent full-time work, which can exacerbate frustrations of unemployed people in their job search. The author estimates that permanent full-time jobs now total less than half of all jobs. In August 2003 some 9.5 million people were working, 5.4 million of whom worked 'full time at 35 hours or more', leaving 4.1 million (43 per cent) working less than full time (ABS 2003b). For this exercise, jobs and individuals are each treated as a unit of one. An ACTU (2003) survey and an Age newspaper study (Age 2003) each reported some 800,000 casual jobs are 'full time'. When the ABS statistic is adjusted to reflect this fact, 4.9 million jobs, or 51.5 per cent of all 'jobs' are now casualised, part-time and/or short-term, whilst only 48.5 percent are permanent full-time.

In the context of this fragmented job market, Minister Abbott recently conceded the unfairness of the interaction between the tax system and the 'clawback' of welfare benefits applied to those who obtain casual part-time employment. De-motivating effective tax rates of 'nearly 70 per cent and sometimes 100 per cent' apply (Abbott 2003: 2-3). Essentially Abbott described the classic 'poverty trap'.

It should be remembered that governments, when blaming and disciplining those who fail to meet their obligations of finding work, effectively shift the accent away from the problem of a lack of employment to 'a problem with unemployed individuals' Lauritsen (2001: 13-14). This oft-used form of blaming 'dole-bludgers' is well understood (Watts 2001: 5) because 'blaming the victim allows policy makers to absolve themselves from responsibility' and obviates the need to provide full employment (Hartman 2001: 3-4).

## **The introduction of Mutual Obligation**

Mutual Obligation policy was introduced in 1997. Prime Minister Howard asserted that his Government should assist those in genuine need. He also noted 'it is the case that – to the extent that it is within their capacity to do so – those in receipt of such assistance should give something back to society in return, and in the process improve their own prospects for self-reliance' (Howard 1999: 10).

The Coalition Government follows, according to Prime Minister Howard, 'a mix in public policy which combines liberalisation in economic policy and what I would describe as a "modern conservatism" in social policy' (Howard 1999, p.3). Combined with a belief in the efficiency of private enterprise and an acceptance of the demands of globalisation, this dry neo-liberal economic fundamentalist (there is nothing 'rational' about it) welfare agenda underpins perceptions that rational individuals readily respond to monetary incentives and disincentives (Donald 2000).

Consequently, Australia's categorical Social Security system is now based on the traditional Lockean Protestant work ethic, which holds that one should not receive 'something for nothing'. The system increasingly seeks to coerce specified welfare recipients to engage in mandatory 'activities' under the ideology of Mutual Obligation (Burgess et al. 1998: 7) so that they may 'give something back'. Such targeting of unemployed welfare recipients has been popularly accepted as being fair and ethical.

‘Giving something back’ to society would be compulsory and could include specified volunteer work, approved study, participation in Work for the Dole programs or prescribed job-search activities. Compulsory job-seeker diaries and interviews, Activity Tests and punitive ‘breaching’ systems were implemented to coerce people to give something back. The second reading for the *Social Security Amendment Bill*, legalising the Mutual Obligation breaching regime, outlined the main objective ‘to maintain a strong deterrence for failure to meet reasonable requirements’ (Moses & Sharples 2000:4).

However implementation has also meant that unemployed people are subjected to more surveillance, duties, and punitive measures than before. Unemployment payments are no longer a right ‘but were now made conditional upon participation in employment programs’ (Burgess et al. 2000: 174-186) thus making welfare no longer a right, but ‘a charity’ (Castles 2001: 102).

### The nature and increased incidence of breach penalties

Centrelink breach penalties are part of a compliance control strategy. The Centrelink Agency is authorised to temporarily withhold partial or total payment from a welfare recipient who is deemed by a Centrelink officer to be in breach of an Administrative or Activity Test requirement imposed under Mutual Obligation (DEWSRB 2001). There were 56 listed ‘reasons’ to impose breach penalties in 1998 (Moses & Sharples 2000: 6) and those reasons have increased. The activity test program extends to breaches of requirements of the Job Network group of publicly funded, privately owned employment training and placement providers contracted to Centrelink (Centrelink 2001: 1).

Activity test penalties reduce payments differentially between first and subsequent ‘offences’. ACOSS (2001a: 3-11) pointed out that a third time activity breach represents a total ‘fine’ or loss of benefit of \$3,384, a higher ‘punishment’ than is applied for many criminal offences. Expanding Mutual Obligation requirements and activity tests facilitated Centrelink’s issue of breach penalties to treble over recent years, peaking at 386,946 in 2000/2001. Although many people receive multiple breaches, this is an extraordinary number of breaches when compared with the total number of 722,000 unemployment benefit recipients reported for 1999-2000 (Newman 2000: 9).

The Sydney Welfare Rights Centre figures (cited in ACOSS 2001a: 5) combined with updated figures from DFACS (2002) and ACOSS (2002: 2) facilitated computation of this table of total breach numbers from 1997/8 through 2001/2.

#### Centrelink breaches from 1997/8 to 2001/2.

1997-1998	1998-1999	1999-2000	2000-2001	2001-2002
(July-June)	(July-June)	(July-June)	(July-June)	(July-June)
120,718	165,492	302,494	386, 946	260,000* Estimate

A spotlight on breaching policy occurred when the extraordinarily high figures for 2000-2001 became widely known and a number of internal and external inquiries

were instigated (ACOSS 2001a; Ombudsman 2002). Eventually this intense focus obliged Minister Vanstone (2002a: 1-2) to admit that breaching 'could be too harsh on vulnerable people' and breach incidences fell by over 100,000 for the 2001–2002 year, to around 260,000 (Vanstone 2002b). However a 100,000 reduction in the number of unemployment beneficiaries was also recorded for that year (FaCS 2002).

Increasing the number of hoops through which a welfare recipient must jump results in disincentive, so that some people leave the system even when fully eligible to receive payment (Goodin 2001). Moses and Sharples (2000: 17) reported that for a 'very conservative 27% [of recipients] the system just becomes too hard and that they turn instead to relatives, the welfare sector or crime for support'.

### **Government expectations for the Mutual Obligation breaching regime**

The Howard Government expected that rigorous application of compulsory activity test requirements would coerce active job search (Moses & Sharples 2000: 4) and 'make it harder for people to choose welfare over work' (Jackman 2002: 5). At the same time, under Mutual Obligation ideology, coercive practices are expected to enhance the chances of people finding work (Richardson 2000).

Under a robust compliance regime, people who received a breach penalty would be motivated to 'comply' with activity tests and thus avoid further breaches at increasing penalty rates. At the same time the pressure would ensure that unemployed people would actively seek work and move 'off-benefit' quickly (DEWRSB 2001: 11). As the Commonwealth Productivity Commission put it; 'a breaching regime is an important part of ensuring that unemployment beneficiaries seriously engage in job search or measures that improve their employability' (CPC 2002: S6, 17).

At a bureaucratic level, Government rhetoric also influenced Departmental and Centrelink staff attitudes toward the treatment of customers, particularly regarding diminution of fair treatment and due process for customers. Moses and Sharples (2000: 11-12) who are Department of Family and Community Services Officers, conceded that 'significant rises' in the breach rate coincided with Mutual Obligation initiatives such as the Job Network and the Work for the Dole program.

Centrelink staff became more willing to impose breaches. ACOSS obtained a copy of Centrelink's internal policy manual. Amongst many controversial instructions, appeared the succinct edict 'job seekers **must not** be given the benefit of the doubt' in breaching matters (ACOSS 2001a: 6-7, bolding in original). In line with its expectation of the deterrence effect, the Howard Government instructed Centrelink to increase compliance surveillance and to contractually pressure Job Network members to increase breach recommendations by setting target quotas for breaches (Ombudsman 2002; Pearce et al. 2002).

The Government expected that recipients should accept active and compulsory job search as 'normal' and 'useful' components of 'reasonable' job-seeker responsibilities (Newman 2000). Minister Anthony (2000: 1) expected that complying with Mutual Obligation requirements would 'leave people with a sense of pride and belonging' and

heightened self-esteem. The Prime Minister expected that coercive Mutual Obligation would 'improve prospects for self reliance' for welfare recipients (Howard 1999: 6)

Further demonstrating expectations that the Mutual Obligation breaching regime would deter all types of people against accepting welfare, the Howard Government is extending Mutual Obligation to a wider range of welfare recipients. Ministers Vanstone and Abbott introduced a Bill extending Mutual Obligation requirements to single parents with school age children and all unemployed people to retirement age (Vanstone & Abbott 2001: 4). Minister Anthony canvassed the notion that such single parents also need to undertake compulsory 'parenting training' so that generational welfare dependence may be avoided (Queensland Times 2002: 10).

Minister Vanstone introduced legislation which would enable some people to lose their Disability Support Pension eligibility, and have their payments reduced to the New Start unemployment benefit level (a cut of around \$26 per week) and be subjected to activity test breach penalties mandated under Mutual Obligation (Lawrence 2002). The Senate continues its refusal to pass the Bill, including subsequent amendments, at time of writing.

### **The methodology of the survey**

The author undertook a qualitative questionnaire type survey in Brisbane, designed to examine the experiences of people who had been breached by Centrelink and compare those experiences with the stated policy expectations of the Howard Government as outlined above. Thirty-three questions, including four on demographics, were framed to elicit data about breaching experiences and outcomes for individual respondents who remained anonymous. Most questions were 'tick-the-box', but seven were open-ended, providing respondents the opportunity to express their own thoughts on their breach penalty experiences.

Questions were asked about reasons for, or the lack of explanation given when breached, perceived fairness, perceived pressures to leave welfare benefit programs, perceived pressures to search harder for work, knowledge of (and use of) systems of appeal. Further questions were asked as to whether notice of an impending breach was given, any consequent increase or decrease in self-esteem, any improvement in job prospects and was there greater or lesser future intention to comply with Centrelink requirements? A final question asked if accommodation was changed as a consequence of having received a breach penalty, was it equally desirable, less desirable or 'other'?

The use of one standard survey form, collected from three separate locations, does assist reliability and validity (Hammersley 1992). Data collection took place during 6 days in April 2002. The author took up a position on the public footpath directly in front of three Centrelink branch offices at Mitchelton, Chermside and Nundah, located in the northern areas of urban Brisbane. Members of the public in the vicinity of these branches could see a large (size A1) sign either side of the author's small table. The signs invited participation in the survey for people who had been breached and were over 18 years old.

Because the author met the survey respondents, liaised with various authorities and conducted correspondence, meetings and discussions with a variety of Centrelink Managers to facilitate the survey, it is appropriate that this additional 'field data' was also included to broaden the study insights (Babbie 1995: 280). For example, some comments made by various Centrelink managers exhibited attitudinal thinking reflective of the ideological rhetoric used by the Howard Government discussed earlier.

At Mitchelton, it was apparent to the author that Centrelink staff had not been alerted about the survey activity because staff exhibited obvious interest, curiosity and concern. A supervisor challenged the researcher with the comment that 'no one else was game to approach you'. Accepting a copy of the survey instrument and various supporting documents, the supervisor advised that the Commonwealth had 'move on' powers, however a senior manager from Central Office was presently 'coming out' to assess the situation.

The Brisbane Area Business Manager duly arrived, having been briefed by the supervisor. Interestingly, she stated that her initial advice indicated there was protest activity involving placards taking place. She expressed surprise that upon arrival, she could only see 'one individual, standing at a small table under a tree, like at those polling booths'. Her major concerns were that there should be no placards, protests or press gatherings.

Similar concerns exhibited by other Centrelink personnel in communications with the author suggested that an elevated level of awareness and understanding does exist about the controversial nature of Mutual Obligation breaching policies. Concern was often expressed that public protest activity could readily erupt, creating 'political problems' for Centrelink.

One manager expressed concern about what form the survey might take, explaining 'this Centrelink office is one of multiple tenancies in this complex, and a very unpopular one, because of the nature of our customers, as you would understand'. That 'nature' was understood by the author to mean unpleasant, poorly behaved deviant people of low social acceptability and standing.

The Nundah Branch Manager confirmed awareness of the survey, explaining that Canberra and Queensland management had directed that this survey could proceed, provided compliance with Centrelink's national guidelines for the management of 'customer behavior' were maintained. Tellingly, she had been told that this author was 'benign and friendly'!

### **Some limitations of the research**

It needs to be recognised that some weaknesses of the survey approach used include the fact that the emphasis of the survey is on individuals who have been breached, and there is no control or comparison group of unemployed people who have not been breached. Thus the information cannot be generalised for use in a broader context. However some conclusions can be drawn about the experiences of the surveyed group.

## **Findings of this survey on Government expectations relative to Mutual Obligation policy**

From the 56 people who completed the survey, some response figures stood out:

- 95% of respondents (53 people) thought that, when they were breached, Centrelink was being unfair to them.
- 93% of respondents (52 people) felt their self-esteem had decreased after being breached. Many felt that Centrelink had put pressure on them to go 'off-benefit' permanently.
- 91% of respondents (51 people) did not realise beforehand, that they were about to be breached. This suggested Centrelink exhibited a lack of concern about customer rights, due process and procedural fairness. The Ombudsman's inquiry drew a similar conclusion a year earlier (McLeod 2001).
- 73% of respondents (41 people) believed that they were not more likely to get paid work because of any Centrelink compulsory activity undertaken, which suggests the requirements were viewed as unrealistic and unreasonable.
- 62% of respondents (35 people) indicated getting a breach penalty was of no help to them in avoiding further breach penalties. A majority 56%, (31 people) reported more than one breach. 14%, (8 people) reported receiving three or more breaches. This accords with the literature (ACOSS 2001b).
- 57% of respondents (32 people) felt they could not look any harder for work than they already were.
- 41% of respondents (23 people) indicated that, once breached, they needed to obtain assistance from family, another 15 people were helped by charities and 7 people indicated that their church was of help. Increasing rates of charity support need are in line with the literature (Horan 2001; Nevile 2001: 30).
- 21% of respondents (12 people) needed to move into less desirable accommodation.

## **Two 'stand-out' unexpected findings**

Whilst all of the findings of this survey have some importance for our understanding of the consequences of people receiving breach penalties, two specific findings stand out as surprising, and of concern.

Firstly, getting breached once does not work as an incentive, as the Government expected, to ensure compliance with compulsory administrative and activity requirements in order to avoid further breaches. More than half of the survey respondents received more than one breach penalty, with several reporting multiple breaches.

Secondly, if one does get breached, there is a significant risk that, as a consequence, there will be a need for that individual to move into less desirable accommodation than was previously enjoyed. This is a very important finding because it indicates that a serious consequence of being breached is that people's accommodation standards could be

reduced, which was noted in the literature (ACOSS 2000: 2; 2001b; Nevile 2001), but could not be an ethical outcome. However in this survey, 12 people out of 56 (almost 22%) reported needing to move into less desirable accommodation, an unexpectedly high proportion. Three respondents wrote 'on the streets' and another reported moving to a 'men's homeless shelter'.

Although almost one quarter of all respondents had housing difficulty, at the Nundah location, respondents appeared to be breached more often, with higher penalty costs, and almost half needed to move to less desirable accommodation after being breached. Nundah is reportedly a less affluent, relatively lower socio-economic area compared with the other two locations (Wilson 2002). It appears that the most vulnerable low-income individuals in the poorest area were driven into lower-standard housing. Whether an *expected* consequence or otherwise, Government is aware that many people who are breached become homeless, as reported by the National Welfare Rights Network (2002:6).

### **Breaching causes real hardship for some people**

This survey found that people who were breached did have their lives seriously affected negatively. Mandatory activity test requirements under Mutual Obligation policy did lead to people being readily breached, consequently experiencing financial hardship and frustration, feelings of decreased self-esteem with strong resentments about being unfairly treated, which raises the question of ethics.

Kinnear (2000: V-VI) examined the ethical foundations of the Howard Government's Mutual Obligation policies and found them unable to stand up to scrutiny. Citing Rawls' argument that Government programs must be just, and individuals must have freely accepted the benefits, she found those two conditionalities not met, and concluded that Mutual Obligation policies failed ethically and morally, especially because the socially advantaged impose obligation as a form of repayment, upon the financially disadvantaged.

Goodin (2001: 191) noted that same lack of choice about receiving welfare, arguing that obliging people to sign contractual activity agreements in return for welfare benefits lacked moral force. The notion 'agree or starve' (by losing benefit payment) was analogous to the highway robber's demand 'your money or your life!'

### **Conclusion**

As noted earlier, the findings of this survey cannot be applied to outcomes for all people who have been breached or unemployed people who have not been breached, yet the findings are largely consistent with the literature. However it is evident that the Howard Government's coercive Mutual Obligation breaching practices have not deterred more than half of the people surveyed in this Brisbane survey from being breached more than once. The breach penalty regime was designed in part to pressure people off welfare. The unemployed people surveyed could not be pressured off welfare, because they had no option other than to continue to claim welfare benefits. Both outcomes are contrary to Government expectation.

Of greatest concern was the larger than expected proportion of people who were breached, even for a first time, who then needed to move into less desirable accommodation, with four people reporting homelessness. This accommodation outcome confirms a need for further research into this area and provides evidence that breaching practices implemented under Mutual Obligation strike at the most vulnerable, least advantaged citizens.

The plight of the unemployed people identified in the survey presents a different picture of their life circumstances than that which Government rhetoric seeks to conjure. Prime Minister Howard boastfully proclaims the effectiveness of the Government's safety net, generously provided to 'protect' people who are 'genuinely in need' and deserving of welfare support (1999: 4).

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