

Chapter 1

Introduction

Purpose of the bill

1.1 The purpose of the Social Security Legislation Amendment (Community Development Program) Bill 2018 (bill) is to introduce the Targeted Compliance Framework (TCF) in those remote regions of Australia which are currently part of the Community Development Program (CDP).

1.2 Alongside the introduction of the TCF in CDP regions, the bill will also:

- reduce CDP participants' mutual obligation hours from up to 25 hours per week, to up to 20 hours per week, depending on a job seeker's assessed work capacity;
- introduce a greater role for local CDP providers to work with participants in the application of the TCF;
- increase the role of local health service providers, including a provision for local health workers to supply evidence for the Department of Human Services to use when deciding whether to reduce a participant's mutual obligation hours; and
- support the creation of 6000 subsidised employment positions in remote Australia.¹

Background

1.3 Introduced on 1 July 2015, the CDP is the remote employment service that supports jobseekers in remote Australia to build skills, address employment barriers and contribute to their communities through a range of flexible activities. It is designed around the unique social and labour market conditions found in remote Australia.²

1.4 Previous iterations of the CDP include the Community Development Employment Projects (CDEP) established in 1977 and the Remote Jobs and Communities Program (RJCP) which operated from 1 July 2013 to 30 June 2015.

1.5 Following the re-branding of the CDP in 2015, the government undertook public consultation on the CDP. In particular, the government sought feedback³ on the development of the supportive legislative instruments which related to the Social

1 Explanatory Memorandum, pp. 3–5.

2 Explanatory Memorandum, p. 3.

3 Australian Government, Department of Prime Minister and Cabinet, Consultation on changes to the Community Development Program, <https://www.pmc.gov.au/indigenous-affairs/employment/consultation-changes-community-development-program> (accessed 17 September 2018).

Security Legislation Amendment (Community Development Program) Bill 2015 (CDP Reform bill 2015).⁴

1.6 This consultation noted that the compliance framework for CDP participants was complex and could be simplified:

The current Framework is complex as it provides for a wide range of financial penalties and suspensions with back pay of varying lengths, mandatory re-engagement appointments with providers and additional activities.

It is proposed that the Job Seeker Compliance Framework be replaced by a more simplified Framework setting out rules that are more immediate and easier for the job seeker and provider to understand.⁵

1.7 Since this consultation, the CDP has been reviewed as outlined below.

Australian National Audit Office report

1.8 On 31 October 2017, the Australian National Audit Office (ANAO) presented a report on its review of the 'Design and Implementation of the Community Development Programme'.⁶ The objective of the audit was to assess the effectiveness of the transition of the RJCP to the CDP, including whether the CDP was well designed and administered effectively and efficiently.

1.9 The review found that the transition was largely effective and made one recommendation to which the government agreed:

The ANAO recommends the Department of the Prime Minister and Cabinet review the Community Development Programme provider payment structure, particularly the incentives it creates and its alignment with the underlying policy objectives of the program changes.⁷

1.10 The Department of Prime Minister and Cabinet's response to the ANAO's report noted that it was taking steps to consider and address the areas of potential improvement raised by the ANAO:

...in particular strengthening guidance on ancillary payments and ensuring the provider payment model aligns with the program's core objectives of assisting job seekers into long-term employment. This includes through the department's ongoing programme implementation and design work,

4 The CDP Reform bill 2015 lapsed when the Parliament was dissolved on 9 May 2016.

5 Australian Government, Department of Prime Minister and Cabinet, Consultation on changes to the Community Development Program, <https://www.pmc.gov.au/indigenous-affairs/employment/consultation-changes-community-development-program>, (accessed 2 October 2018).

6 Australian National Audit Office, The Design and Implementation of the Community Development Programme, <https://www.anao.gov.au/work/performance-audit/design-and-implementationcommunity-development-programme> (accessed 17 September 2018).

7 Australian National Audit Office, The Design and Implementation of the Community Development Programme, <https://www.anao.gov.au/work/performance-audit/design-and-implementationcommunity-development-programme> (accessed 17 September 2018).

supported by a continual focus on provider performance, which is lifting job seeker outcomes. The Department is also committed to improving evaluation efforts and building the evidence base for Indigenous policies and programmes.⁸

Senate inquiry into the CDP

1.11 On 14 December 2017, the Senate Finance and Public Administration References Committee (FPA committee) tabled its report on the inquiry into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the CDP. The final report made 22 recommendations in relation to the CDP.⁹

Discussion Paper

1.12 The Department of Prime Minister and Cabinet released a Discussion Paper on possible new employment and participation models for remote Australia on 14 December 2017.¹⁰

1.13 The paper outlined three potential remote employment and participation model options: a new wage-based model, the model set out in the CDP Reform bill 2015 and an improved version of the current CDP. The Discussion Paper noted that:

The Minister seeks a new model that lifts the best parts from the CDP, past models such as the CDEP, and new thinking to ensure we not only maintain momentum, but also further improve outcomes for remote job seekers and communities.¹¹

1.14 A number of participants in this inquiry made submissions in response to the Discussion Paper.¹²

8 Australian National Audit Office, The Design and Implementation of the Community Development Programme, <https://www.anao.gov.au/work/performance-audit/design-and-implementation-community-development-programme> (accessed 2 October 2018).

9 Finance and Public Administration References Committee, Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP), December 2017.

10 Australian Government, Department of the Prime Minister and Cabinet, *Discussion Paper: Remote Employment and Participation*, December 2017, <https://www.pmc.gov.au/sites/default/files/publications/discussion-paper-remote-employment-participation.pdf> (accessed 27 September 2018).

11 Australian Government, Department of the Prime Minister and Cabinet, *Discussion Paper: Remote Employment and Participation*, December 2017, <https://www.pmc.gov.au/sites/default/files/publications/discussion-paper-remote-employment-participation.pdf> (accessed 27 September 2018).

12 Australian Government, Department of the Prime Minister and Cabinet, Remote Employment and Participation—discussion paper submissions, <https://pmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp/remote-employment-and-participation-discussion-paper-submissions> (accessed 27 September 2018).

Reforms announced

1.15 On 8 May 2018, the Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion (Minister), announced reforms to the CDP as part of the 2018–19 Budget. In a media release, the Minister noted:

The Community Development Programme (CDP) reforms... ensure remote job seekers are further supported on their pathway to employment. It will now be a simpler, more streamlined program, with less interactions with the national welfare system for remote job seekers. This is being complemented by a government-funded employment program for 6,000 jobs in remote Australia.¹³

1.16 As part of these reforms, it was announced that CDP participants would be subject to the TCF which commenced for regional and urban Australia from 1 July 2018.¹⁴ At that time, the TCF commenced across jobactive, Parents Next, and Disability Employment Services. The bill proposes that CDP participants will be subject to the same compliance framework as other job seekers.

1.17 The Minister also noted that from July 2018, there would be Indigenous providers running CDP, commenting that 'the Government is working in partnership to ensure we have more Indigenous and more local control in the design and delivery of CDP'.¹⁵

Key provisions of the bill

Application of the TCF to CDP participants

1.18 The bill seeks to amend the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to support reforms to the CDP and introduce the TCF to CDP regions, consistent with arrangements in the rest of Australia.

1.19 The TCF is a government initiative for job seekers which commenced for regional and urban Australia on 1 July 2018. This compliance system relies on participants meeting their mutual obligation requirements, and introduces a framework of demerits and financial penalties for failure to meet obligations. A jobseeker will receive a demerit if they do not meet a mutual obligation requirement, for example if

13 Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, '2018-19 Budget to strengthen economic, employment and health opportunities for First Australians', *Media Release*, 9 May 2018, <https://ministers.pmc.gov.au/scullion/2018/2018-19-budget-strengthen-economic-employment-and-health-opportunities-first> (accessed 17 September 2018).

14 Explanatory Memorandum, p. 3.

15 Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, 'Community Development Programme Service Providers meet to talk ongoing success', *Media Release*, 14 June 2018 <https://ministers.pmc.gov.au/scullion/2018/community-development-programme-service-providers-meet-talk-ongoing-success> (accessed 17 September 2018).

he or she fails to attend an appointment. If a jobseeker receives five demerits in a six-month period, they will be subject to financial penalties.¹⁶

1.20 In transitioning CDP participants to the TCF, the TCF will remove penalties that CDP participants currently receive for one-off breaches of mutual obligation requirements and financial penalties will focus on participants who are persistently and wilfully non-compliant.¹⁷

1.21 Under the TCF, the most significant penalty that a CDP participant can receive is a four week non-payment period. The participant's payment is cancelled and he or she will not receive any payment during this time. At the end of the period, the participant will need to re-apply to receive payment in the future.¹⁸

1.22 The TCF will also include additional protections for CDP participants and build in more check points to ensure they are capable of meeting their requirements.¹⁹ These include a capability interview and capability assessment of a CPD participant's ability to undertake activities.²⁰ Further, no financial penalties will be incurred from the first three demerits a participant receives.²¹

Reduction in mutual obligation hours

1.23 The bill introduces a reduction to CDP participants' mutual obligation hours, from up to 25 hours, to up to 20 hours, depending on a jobseeker's assessed work capacity.²²

Increased role for local health providers

1.24 The bill will introduce a number of changes to increase the role of local health service providers. In particular, local health workers will be able to supply evidence to the Department of Human Services, which can be used when deciding whether to reduce a participant's mutual obligation hours.²³

16 Australian Government, Department of Jobs and Small Business, 'Explainer: Targeted job seeker compliance framework', <https://www.jobs.gov.au/newsroom/explainer-targeted-job-seeker-compliance-framework> (accessed 28 September 2018).

17 Explanatory Memorandum, p. 3.

18 Australian Government, *jobactive*, 'New compliance system', <https://jobsearch.gov.au/compliance> (accessed 3 October 2018).

19 Explanatory Memorandum, p. 3.

20 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 58.

21 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 58.

22 Explanatory Memorandum, p. 3.

23 Explanatory Memorandum, pp. 3–4.

Subsidised employment

1.25 The bill will support the creation of 6000 subsidised jobs in remote Australia. The explanatory memorandum notes that these jobs will only be available to CDP participants, and that they are 'designed to grow the size and capacity of the remote labour market and support the development of more local business'.²⁴

1.26 Subsidised employment positions will include the same pay and conditions that would otherwise be attached to that position, and CDP participants will continue to qualify for a reduced rate of their income support payments, after the applicable income test is applied.²⁵

1.27 CDP participants who hold a subsidised employment position will be exempt from activity test requirements and will therefore not incur mutual obligation failures under the TCF. This will also minimise the participant's engagements with the income support system.²⁶

Financial implications

1.28 The explanatory memorandum to the bill notes that 'there is no net financial impact arising from the legislation'.²⁷

Legislative scrutiny

Parliamentary Joint Committee on Human Rights

1.29 The explanatory memorandum to the bill notes that the schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²⁸

1.30 The Parliamentary Joint Committee on Human Rights (Human Rights committee) reported that it had previously considered the TCF in its human rights assessments of the bill that became the *Social Security Legislation Amendment (Welfare Reform) Act 2018* (Welfare Reform Act). This assessment raised concerns about a number of aspects of the TCF, particularly in relation to the four week non-payment penalty. The Human Rights committee considered that:

...the financial penalty is likely to be incompatible with the right to social security insofar as there may be circumstances where a person is unable to meet basic necessities during the four week non-payment period. As such,

24 Explanatory Memorandum, p. 4.

25 Explanatory Memorandum, p. 4.

26 Explanatory Memorandum, p. 4.

27 Explanatory Memorandum, p. 6.

28 Explanatory Memorandum, p. 18.

the extension of the TCF to a new class of vulnerable persons [CDP participants] raises similar concerns.²⁹

1.31 The Human Rights committee also noted that the statement of compatibility of the bill for the Welfare Reform Act explained that the rationale for not applying the TCF to CDP participants was 'to reflect the unique labour market conditions that job seekers face in remote Australia'.³⁰

1.32 The Human Rights committee considered that the bill engages the following rights:

- Right to social security;
- Right to an adequate standard of living;
- Right to work; and
- Right to equality and non-discrimination.

1.33 The Human Rights committee expressed concerns about whether the limitations on these rights, imposed by the bill, were permissible, and whether the measures in the bill are rationally connected, effective and proportionate to the stated objective of the bill. The Human Rights committee sought advice on these matters from the Minister.³¹

1.34 The Minister's response was not published prior to the tabling of this report.

Senate Standing Committee for the Scrutiny of Bills

1.35 The Senate Standing Committee for Scrutiny of Bills (Scrutiny of Bills committee) noted that the bill would exempt CDP participants from requirements of the TCF if they were undertaking 'subsidised employment'.³² The committee further noted that what constitutes 'subsidised employment' is not defined in primary legislation, but rather that 'the secretary may, by legislative instrument, determine a kind of subsidy for the purposes of subsection 42AEA(1)'.³³

1.36 The Scrutiny of Bills committee considered that such significant matters should be included in primary legislation, 'unless a sound justification for the use of delegated legislation is provided'.³⁴

29 Parliamentary Joint Committee on Human Rights (human rights committee), *Report 10 of 2018*, 18 September 2018, p. 7.

30 Parliamentary Joint Committee on Human Rights (human rights committee), *Report 10 of 2018*, 18 September 2018, p. 8.

31 Parliamentary Joint Committee on Human Rights (human rights committee), *Report 10 of 2018*, 18 September 2018, pp. 4–19.

32 Senate Standing Committee for Scrutiny of Bills, *Scrutiny Digest 10 of 2018*, 12 September 2018, p. 6.

33 Senate Standing Committee for Scrutiny of Bills, *Scrutiny Digest 10 of 2018*, 12 September 2018, p. 6.

34 Senate Standing Committee for Scrutiny of Bills, *Scrutiny Digest 10 of 2018*, 12 September 2018, p. 6.

1.37 The explanatory memorandum suggested this approach would 'provide the government with flexibility to specify the subsidy arrangement at a later date'.³⁵ However, the Scrutiny of Bills committee noted that it:

...does not generally consider administrative flexibility to be sufficient justification for including significant matters in delegated legislation rather than in primary legislation.³⁶

1.38 The Scrutiny of Bills committee drew its concerns to the attention of senators to determine the appropriateness of allowing delegated legislation to prescribe what constitutes 'subsidised employment'.³⁷

Conduct of the inquiry

1.39 The bill was introduced into the Senate on 23 August 2018.³⁸ Pursuant to the adoption of the Senate Standing Committee for Selection of Bills report on that same day, the bill was referred to the committee for inquiry and report by 12 October 2018.³⁹

Submissions

1.40 The committee wrote to relevant organisations and individuals and invited them to make a submission to the inquiry by 21 September 2018. Submissions continued to be accepted after this date.

1.41 The committee received 21 public submissions which were published on the committee's website. A list of submissions received is included at Appendix 1.

Witnesses

1.42 A public hearing for the inquiry was held in Canberra on 21 September 2018.

1.43 The committee heard evidence from organisations involved in different aspects of the CDP, as well as from the Department of Prime Minister and Cabinet and the Department of Human Services. A list of witnesses is included at Appendix 2.

Acknowledgement

1.44 The committee would like to thank those individuals and organisations that made submissions and gave evidence at the public hearing.

Note on references

1.45 References to the *Committee Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcripts.

35 Explanatory Memorandum, p. 5.

36 Senate Standing Committee for Scrutiny of Bills, *Scrutiny Digest 10 of 2018*, 12 September 2018, p. 6.

37 Senate Standing Committee for Scrutiny of Bills, *Scrutiny Digest 10 of 2018*, 12 September 2018, p. 7.

38 *Journals of the Senate*, No. 113, 23 August 2018, p. 3610.

39 *Journals of the Senate*, No. 113, 23 August 2018, pp. 3606–3607.