20 January 2016

Senate Finance and Public Administration Committee
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Submission: Finance and Public Administration Committee inquiry into the Social Security Legislation Amendment (Community Development Program) Bill 2015

The submission draws on research conducted as part of an Australian Research Council Linkage project examining the implementation of the Remote Jobs and Communities Program (now CDP). This project is led by Dr Will Sanders and is based at the Centre for Aboriginal Economic Policy Research at the Australian National University. Jobs Australia is the industry partner. The research has included interviews with clients, frontline workers and managers across several provider organisations and regions over two years. It has also included a survey of providers (available at http://caepr.anu.edu.au/Publications/WP/2015WP97.php-0) and, more recently, analysis of public data on the rate of social security penalties being applied to RJCP clients. The submission also draws on my experience working in and with employment service provider organisations, including in remote Australia, since 2000.

These views are my own.

Lisa Fowkes.

Contents

Are the current arrangements failing (and how)?

In Minister Scullion's Second Reading speech in relation to the *Social Security Legislation Amendment (Community Development Program) Bill 2015* ('CDP Bill') he argues that reforms to the income support system are needed to drive 'the behavioural changes needed to get people active, off welfare and into work'. He suggests that the current arrangements are too complex – so that 'remote job seekers don't get the link between attending activities and receiving income support'.

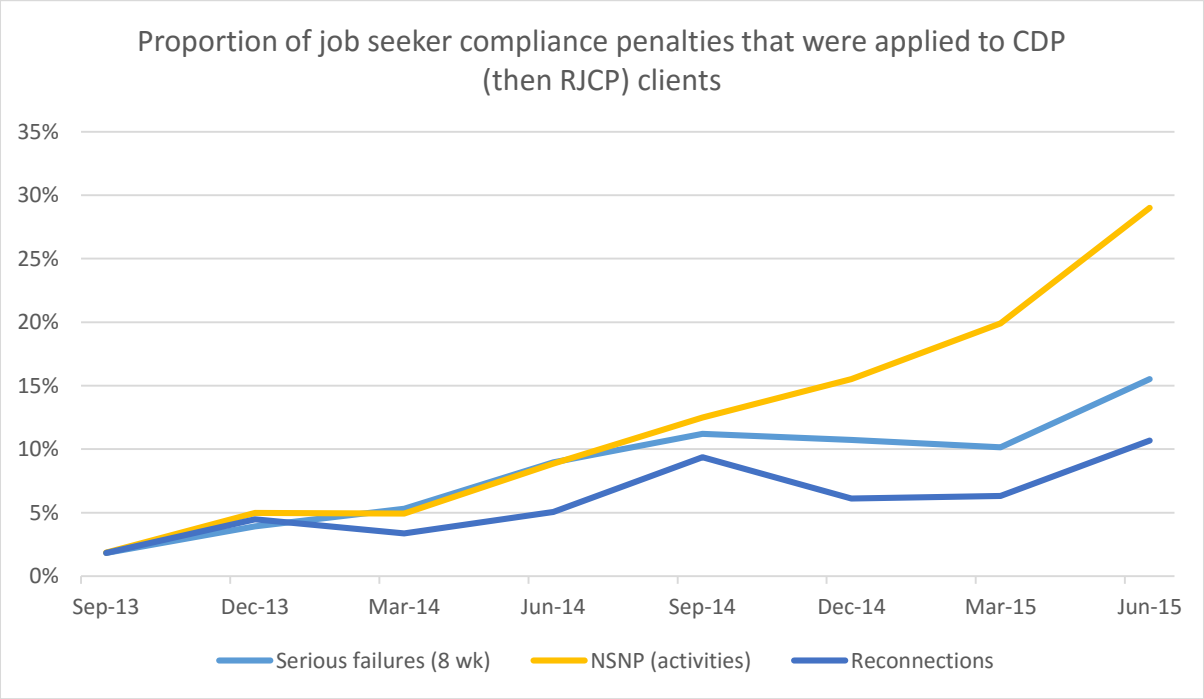
The Explanatory Memorandum notes that job seekers in the current CDP attract over 60% of No Show No Pay penalties, while making up only 5% of the overall caseload. It implies that new, simpler, rules that would be established by the Minister (should this Bill pass) would mean that job seekers will be more likely to comply, and the rate of penalties will be reduced.

My argument here is that, while complexity and lack of understanding may contribute to compliance failures, the data suggests that other factors are more important. This being the case, making it easier for penalties to be applied and making providers responsible will not substantially change the level of actual compliance of CDP job seekers and therefore, would not reduce (and is likely to increase) the level of penalties applied to them.

Same job seeker compliance framework – so why are the outcomes so different?

The same job seeker compliance framework applies to job seekers across Job Services Australia ('JSA') (now jobactive), Disability Employment Services ('DES') and CDP – yet CDP job seekers attract far more penalties. Chart 1 shows the proportion of all penalties applied to CDP (formerly RJCP) clients across the three major categories of penalty applied: (i) No Show No Pay (non attendance at activities), (ii) failure to attend Reconnection appointments and (iii) Serious Penalties. Considering that CDP clients comprise fewer than 5% of the caseload subject to the compliance framework, it is clear that they are over represented across each of these penalty types, and that this over representation has been increasing.

Chart 1



(The Explanatory Memorandum indicates that this has increased again since the implementation of new Work for the Dole rules - stating that the program now accounts for 60% of No Show No Pay penalties – twelve times the representation of CDP clients on the job seeker caseload.)

Particularly worrying is the number of serious (8 week) penalties applied. Four thousand, three hundred and forty four (4344) serious (8 week) penalties were applied over the 2014/15 financial year to a caseload of around 37,000 people in CDP. If the recent information about employment outcomes provided to Senate Estimates is typical, then, over the last year, CDP job seekers were more likely to receive an 8 week penalty than to secure a job for 13 weeks or more. This would be consistent with concerns raised by providers that they are spending more time on compliance than on working to improve outcomes for job seekers (for example Fowkes & Sanders 2015, p15).

One reason that has been provided for this high rate of penalties in the Explanatory Memorandum (and a justification for the proposed Bill) is confusion caused amongst job seekers by the complexity of the compliance arrangements, and particularly, caused by the period of time that may elapse before a penalty is applied. Before financial penalties are applied by Department of Human Services ('DHS') their staff must check that the job seeker understands what they were meant to do. According to the information provided to Senate Estimates, 6.7% of DHS rejections of provider participation reports were because the job seeker reported that they were confused about their requirements. While this number is not large, it is also true that, in our interviews, many frontline staff have also expressed their concern about confusion - not so much because the rules are too complex, but because they have changed so frequently over the last 2 years and because Government efforts to consult about or explain changes to people in remote communities (particularly in local languages) have been poor. Even so, confusion over rules does not seem to be an adequate explanation of either the large increase in the number of penalties applied to job seekers in CDP, or the substantial differences between the pattern of application of penalties between CDP job seekers and job seekers in JSA (see charts 2 & 3).

Issues of timeliness and complexity apply just as much to Reconnection penalties (which have been relatively stable in CDP/RJCP) as to No Show No Pay penalties (which have rapidly escalated). The fact that so many penalties have already been applied to CDP clients (47,000 penalties across a caseload of 37,000), with no apparent impact on levels of compliance, suggests that many people are continuing to fall foul of the rules despite having direct experience of having been penalised.

Chart 2

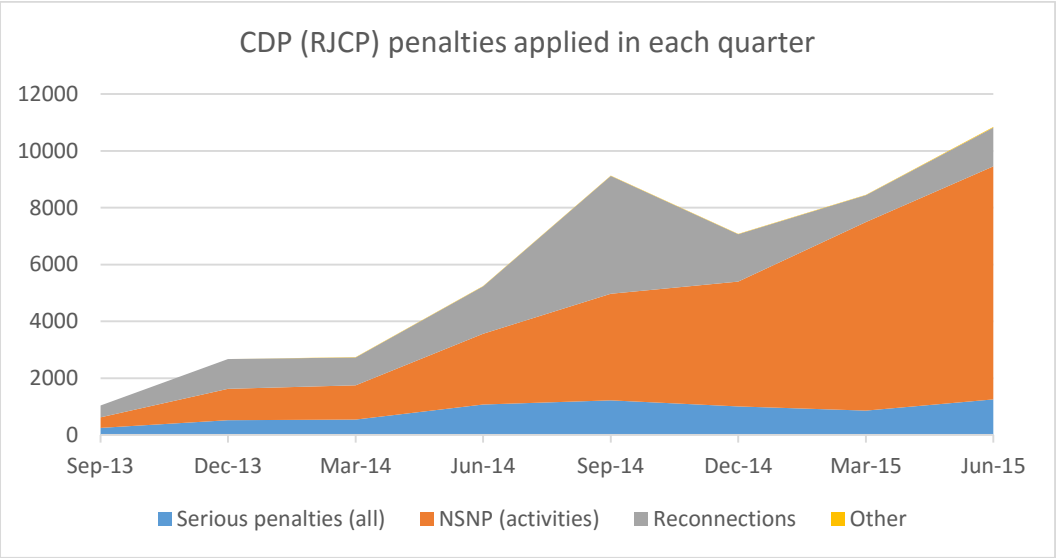
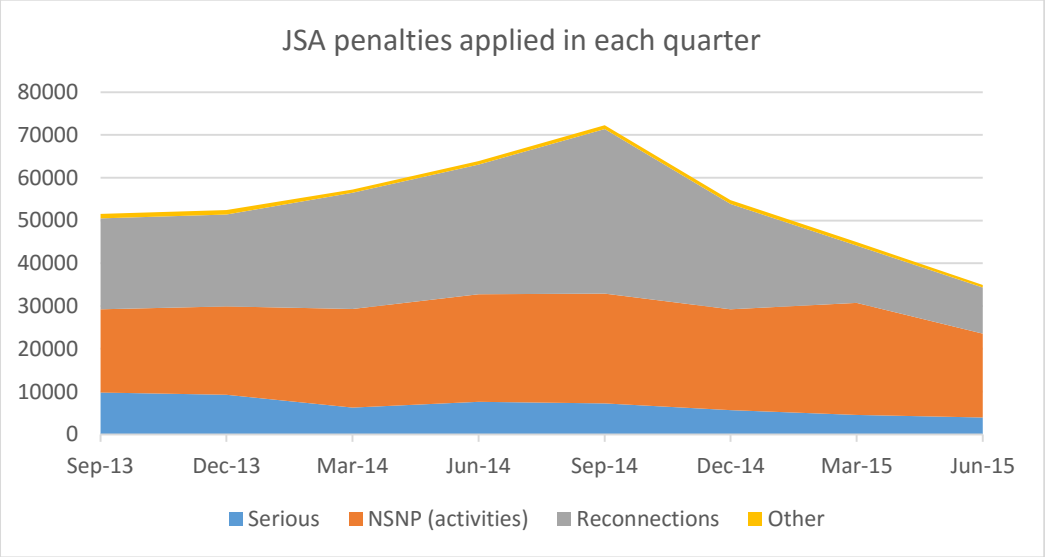


Chart 3



Dr Will Sanders and I recently analysed published job seeker compliance data in relation to RJCP/CDP participants and their counterparts in other programs over the two years from July 2013 – June 2015. The resulting report is attached to this submission. Using this material, and drawing on our observations of the program, we suggest three factors are likely to be driving the disproportionate application of financial penalties to CDP job seekers:

- More onerous activity requirements. From the beginning of RJCP, the 'benchmark' hours of activity required of job seekers in that scheme exceeded that required of other job seekers. For example, while most JSA job seekers were required to participate in some form of mutual obligation activity for 11.5-15 hours per week for six months of the year (after 12 months in the program), most RJCP job seekers were required to participate 15-20 hours per week, year round. Over 2014 the Government shifted its focus to moving more RJCP job seekers into 'structured activities' (essentially Work for the Dole), and since 1 July 2015 most

job seekers (18-49) have been required to do Work for the Dole ('WfD') 25 hours per week, spread over 5 days, year round. CDP job seekers are asked to do more, and asked to attend more often, than their non-remote counterparts so they have more 'opportunities to fail'. This is reflected in the substantially higher rate of 'No Show No Pay' penalties being applied to job seekers in CDP compared to JSA (or jobactive) (Chart 1). In turn, these appear likely to be contributing to a higher rate of serious penalties (which are applied after an accumulation of more minor breaches). If this analysis is correct, then we are likely to see further increases in penalties when the next job seeker compliance data is released.

- Less effective protections for vulnerable people, or people in periods of crisis. There are a series of arrangements – predominantly administered by DHS – that are designed to prevent job seekers having conditions attached to their benefits that they are unlikely to be able to meet and to ensure that serious penalties are not applied where non compliances arises from underlying issues (eg mental illness, personal violence) related to the individual job seeker. Most of these rely on effective assessments of individual circumstances by DHS professionals. Given the prevalence of chronic health problems, mental illness, disability (including cognitive impairments) and household violence in many remote communities, we would expect a substantially higher rate of determination of reduced work capacity, of temporary exemptions and of referral for further assistance by DHS staff (for example following a CCA) in remote areas. However our review of what limited information is available suggests that job seekers in RJCP/CDP are less likely to be found to have personal issues that impact on their ability to participate. Likely reasons for this include (i) a lack of diagnosis and/or documentation of health, disability or other issues because of lack of local services, (ii) significantly lower rate of face to face assessments of RJCP job seekers (iii) lack of provision of interpreters. The effect of failure of protections for vulnerable people who have activity requirements is that they become subject to obligations that are inappropriate and they incur a higher rate of penalties. The available data suggests that this is occurring in CDP.

- Active or passive resistance to program obligations. There is anecdotal evidence that some job seekers are leaving the income support system. Some may simply find it too hard to navigate, or too hard to comply (particularly those with undiagnosed or unrecognised problems). However, in the course of my interviews with job seekers, some have also said that they believe that the Work for the Dole requirements are discriminatory (compared to what is required in non-remote areas), and/or that they view the expectation of 5 days per week work when on income support as unreasonable. Many express a strong desire for paid work and for fair recognition of the work that they are currently asked to do 'for the dole'. Many see providers as just 'telling them what to do', rather than helping with work. It is particularly worrying that, according to providers and other commentators, those most likely to remove themselves from the system are young men. If the aim is to engage people in positive action for themselves and/or their communities, then applying penalties may not only be ineffective, it may be counterproductive in both the short and long term.

The alarming rate of financial penalties being applied to people living in what are often extremely poor and stressed communities must be cause for concern. In 2010, an independent review of the (then new) job seeker compliance framework Panel said:

> The new compliance system faces great difficulties in remote areas, especially in relation to Indigenous people. While some of its innovative safeguards are preventing hardship which might otherwise have occurred, there is a clear risk that Participation Reports and participation failures will continue to accumulate for reasons which have more to do with

> the dearth of opportunities and services in these areas than with recalcitrance on the part of job seekers. The need to maintain assistance and pressure on job seekers to maximise their limited opportunities must be balanced with the risk of pointless and damaging harassment to comply with unfeasible or inappropriate participation requirements. While some of the general recommendations in this report would also be beneficial in remote areas, they need to be complemented by proposals from a more specialised and intensive review. (Buduls et al 2011 p75)

No review was conducted and the data suggests that the risks identified in 2010 are being realised. At the same time, requirements of remote job seekers have increased and are now significantly stricter than those applied elsewhere, so that the effect of inadequate protections is exacerbated. In the most recent Social Justice and Native Title Report, Mick Gooda expressed concern over whether these more onerous requirements were warranted, whether they may in fact be discriminatory, and whether – based on evidence to date – they were likely to bring about positive changes in employment rates (Gooda, 2015 p60). In our research, these concerns have been echoed by many who are subject to the system and many working in it. Issues of the harshness and rigidity of overall requirements, efficacy of protections for vulnerability and perceived value and legitimacy of the program itself appear to be driving increases in penalties. These will not be addressed by the proposed Bill.

What should be done?

- Job seeker requirements under the Community Development Program should be revised to ensure that they are reasonable (taking into account the range of different circumstances of people affected), flexible and proportionate to the level of opportunity provided through the program. The program should be re-focussed on strategies that assist individuals to improve their prospects of work and/or wellbeing. In establishing requirements, consultation with affected individuals and communities must take place in line with the recommendations of the Aboriginal and Torres Strait Islander Social Justice Commissioner in his most recent Social Justice and Native Title Report.

- An external review should be conducted of the equity and efficacy of current arrangements, particularly those administered by DHS, designed to ensure that individual capabilities are taken into account in the setting of job seeker requirements and in the assessment of appropriateness of compliance measures to vulnerable individuals in remote communities.

The attempt to make income support 'work like'

The Minister has frequently commented on the positive aspects of CDEP – a program which offered waged work on community projects. He has indicated that, should the CDP Bill be successful, he would want to make administration of income support more like the administration of CDEP wages. CDEP was simpler and enjoyed much stronger community support than Work for the Dole. It contributed to higher incomes and better social outcomes for its participants compared with their unemployed counterparts. But there were critical differences between that scheme and the current Work for the Dole arrangements:

- CDEP operated on top of the safety net. While in the early years of CDEP 'one in all in' arrangements applied, for most of its forty year history, those that could not or would not

participate in CDEP could still access unemployment benefits[1]. It was essentially a voluntary program, offering opportunities to earn wages and be considered an employee, to contribute to community projects, and to avoid engagement with Centrelink. This was very important to those who might have significant personal/family challenges, disabilities, mental illness etc, who might participate in CDEP at times, but otherwise could fall back on income support. By contrast, Work for the Dole is mandatory for all 18-49 year olds and, while there can be exceptions, these rely on assessments by either DHS or providers that this option is inappropriate. But DHS assessment processes are not adequate (as discussed above), and providers have a direct financial interest in keeping people in WfD (see further below).

- CDEP paid the minimum award wage. CDEP wages were based on minimum award wages, so that to earn the equivalent of Newstart, it was only necessary to work around 15 hours per week. It was because of this basic principle that CDEP workers were so readily able to 'top up' their income. They had time available and employers often wanted more hours. Plus providers were able to redirect unspent wages into increased hours for more motivated workers. And it was also the reason that, while employers might have exploited the availability of CDEP workers to get free labour, the workers themselves at least received the minimum hourly rate as well as some other conditions like leave, on an equal basis to other Australians. While the hours that people are required to 'Work for the Dole' were and – at least under jobactive – still are, notionally based on an hourly rate close to the minimum wage, the hours required under the new CDP break that nexus with an hourly rate – instead establishing a notional rate of around $10.50 per hour. On an hourly basis CDP workers – unlike those previously in CDEP – are paid significantly less for each hour they work than other workers and – in fact – most other income support recipients in other parts of the country.

- While funding for CDEP was provided by the Commonwealth, the effective employer was a local Indigenous organisation. For most of its history CDEP was managed by local Indigenous organisations. These organisations were given considerable discretion in the rules that they applied and the arrangements that they made for CDEP. For example CDEP organisations frequently applied a system of deductions from wages to cover things like rent and power, so that when they docked pay for 'no shows' it was often the cash component only that was affected. They also had discretion over absences and matters like cultural leave and could pay variable wage rates, provided that all workers were able to earn the equivalent of income support and were paid a minimum wage. However under CDP, the Government has made detailed rules about how Work for the Dole should run, including who must attend, the arrangement of hours, what can be done, under what circumstances people must be paid or not. And whereas CDEP participants might have once had the chance to participate in decisions about the running of their local CDEP organisation, there is no current requirement that CDP providers be locally controlled. Under CDP, providers are administering the Government's income support rules. Under CDEP local organisations were employing local people.

The establishment of CDEP as a program whereby Indigenous organisations were given funds to employ local people on wages meant that the organisations had a great deal of flexibility in how they operated and that the protections that were afforded to workers were employment protections – underpinned by access to a safety net. It is because Work for the Dole is not employment, because

[1] Refusal of an offer of a CDEP place could lead to cancellation of unemployment benefit, however many CDEPs had waiting lists so the issue didn't arose, and the group of people captured by these rules was far narrower than currently applied.

it is mandatory for even highly disadvantaged people, and because what is at stake is access to a very minimal safety net, that the rules that apply are so involved, and the link between non compliance and penalties are less direct.

Managing the minimum safety net is different from paying a wage

Unemployment benefits in Australia are designed to protect people from severe poverty and its consequences during periods when they cannot find work. In Australia, unemployment benefits are set at a rate well below the minimum wage. For example the current rate of Newstart is $523.40 per fortnight (single adult, no children), compared with the minimum wage of $1313.80 per fortnight. In fact, the rate of unemployment benefit is so low that many, including those in the business community, have argued that it is inhibiting recipients' ability to make the move into work. In this context the impact of loss of payments – even for a day – could be substantial.

It is also important to recognise that there has been a substantial change in the group of people who are now required to participate in labour market programs. From 2006, more sole parents and people with disabilities were subject to mutual obligation. Over the period from 2004-2009, remote area exemptions were lifted. In 2010 the Independent Review of the Job Seeker Compliance Framework noted that:

> The new Job Services Australia (JSA) system has a mix of job seekers which is substantially different from the mix in the previous Job Network system. A considerable number of people receiving participation payments were not included in the Job Network system because they had major barriers to finding work, such as homelessness or mental health problems. They were referred to a separate system of providers and were subject to less stringent participation requirements. (Buduls et al 2010, p20)

In remote areas, as well as picking up this group that would never have previously been compelled to participate, CDP has also taken the place of Disability Employment Services. People with significant physical and intellectual disabilities, mental illnesses and those in personal crisis are compelled to be part of this system.

The current Job Seeker Compliance Framework, which was established just prior to the establishment of JSA, includes special protections for people whose circumstances make it hard for them to participate either in the labour market or in employment programmes. These protections recognise that many of the people who are subject to participation obligations are not 'work ready', and when they fail to meet their obligations it may be for reasons that are connected with this. The involvement of professionals in making these judgements reflects the fact that it can be difficult to recognise or assess the impact of underlying issues like mental illness or cognitive impairment. Unfortunately, as discussed above, it appears that these systems are not working well enough in remote Australia, but this does not mean that remote Australians with significant participation barriers do not need protection.

What should be done?

Government should consider the following:

- The Government has allocated $31m to implement this Bill. This money should be redirected to develop and test a new approach, based on CDEP but with greater emphasis on transitions into enterprise and employment, that would provide opportunities for people in remote communities to work. This would be simpler (operating on top of the safety net),

fairer (award wages) and (based on evidence from CDEP) would improve community wellbeing rather than impoverishing people.

- Where people do not opt for paid work, or cannot meet its requirements, case management and mutual obligation arrangements should be developed which would include community activity, individual assistance, job search, training and periods of work experience.

It should be noted that the Aboriginal Peak Organisations of the NT (APONT) put forward one such proposal (Community Employment and Enterprise Development Scheme (CEEDS)) in the initial consultations around the RJCP. This proposal would be a good starting point for testing a new model.

Breadth and scope of this legislation

While the Minister has identified some of the sorts of rules that might be included in special remote income support arrangements, the mechanism adopted in the Bill is to move decision making about social security rights for remote (mainly Indigenous) people from the legislature to the Minister for Indigenous Affairs[2]. This would represent a substantial shift in the balance of power between the Parliament and the Executive – one that far in excess of normal practice, and seems inconsistent with the role of Parliament in upholding the rights of citizens[3].

Parliamentary scrutiny of the detail of legislation is an important check on what Governments do. In case of compliance arrangements applying to income support recipients, the rules relating to payment of social security benefits are frequently debated in Parliament and have been subject to significant Parliamentary and independent inquiries from time to time. The Comprehensive Compliance Assessment process, for example, was introduced following widespread concern about increasing rates of penalties being applied, and their impact on people who may have significant non-vocational barriers. If this legislation were to pass, while the Parliament could still disallow regulations, the sort of detailed analysis and scrutiny that would occur if they were introduced as social security legislation would not take place.

An argument could be made that the Minister needs the latitude to consult and tailor arrangements for each specific community, and that separate legislation for each location would be too burdensome. I accept that an argument may be able to be made that different social security arrangements might be appropriate in remote areas. In this case, those rules would have a disproportionate effect on Indigenous people, who comprise around 85% of the current CDP caseload. This means that special attention must be paid to whether the effect of the legislation will be enhance or limit human rights (including the right to social security), and there must be a clear mechanism to ensure the free, prior and informed consent of the groups affected. However the only substantial check on the Minister's power in the proposed legislation is the ability of the Parliament to disallow regulations. There are no structural arrangements for consultation or involvement by local people, nor is there any independent scrutiny or evaluation of measures (cf, Cape York Welfare Reform initiative). The matters for consideration by the Minister do not include

[2] . It is worth noting that two of the substantive measures identified by the Minister are addressed elsewhere. The issue of immediacy of penalties will likely be addressed through a Bill currently before the Parliament (Social Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015). Weekly payments – another proposal put forward to simplify the system – are already possible under the existing social security legislation.

[3] For example, according to Odger's Australian Senate Practice (13th ed): "The essential theory of delegated legislation is that while the Parliament deals directly with general principles, the executive, or other body empowered to make subordinate legislation, attends to matters of administration and detail." p 325

community consent, the views of providers or evidence that the new rules would be beneficial. There is no limit to the obligations that may be imposed on job seekers or to the penalties that could be applied, there is no principle that most people be better off or that the rules be reviewed. Whether or not one agrees with the types of rules that have been sketched in the Minister's statements, the legislation would empower any future Minister to establish a regime according to their own view.

What should be done?

- Access to the social security safety net is an important right of Australian citizens. A Minister acting alone should not be able to single out particular population sub-groups for different treatment.

- If different rules are proposed for areas of remote Australia then these should be subjected to no less scrutiny than rules applied to other citizens – that is, they should be scrutinised by Parliament. In addition, where they are to apply in remote Indigenous communities, it should be – as the Aboriginal and Torres Strait Islander Social Justice Commissioner noted in his most recent Social Justice Report – with the free prior and informed consent of those affected, and on the basis that it would enhance, not limit their human rights.

Devolution of control over payments to CDP providers

This Bill sits against a backdrop of a new CDP Funding Deed and Performance Framework (effective 1 July 2015) that directly links program provider fees and Key Performance Indicators (hence their ability to retain the contract) to participation in Work for the Dole and application of sanctions for non-compliance.

Under the new arrangements there are two levels of service fees. Basic payments ($4,000 per annum) are applicable where a job seeker is not required to participate in Work for the Dole – either because they do not fall within the 18-49 age group or because they have been assessed as unable to participate[4]. Work for the Dole payments ($12,450 per annum) are substantially higher – which means that providers have strong incentives not to identify obstacles to WfD participation (eg mental illness, domestic violence).

Despite the Guidelines stating that:

> providers have a number of strategies they can use to engage job seekers, such as giving a job seeker another chance to attend an appointment or letting them make up time missed from an activity, if they believe this will be a more effective way of re- engaging the job seeker than compliance action. (Sept 2015 Guidelines p39

the payments system penalises those that do not immediately apply penalties. The Guidelines state that:

> Providers will be paid Work for the Dole Payments if the following conditions are met:

[4] Note that they can volunteer for Work for the Dole – in which case the higher rate is paid

> • They have placed the job seeker in enough activities to meet the participation requirements in their Job Plan (up to 25 hours per week) and the job seeker attends these activities;
>
> • Where a job seeker did not attend, the job seeker had good reason (known as a Valid Reason and/or gave prior notice consistent with the definitions outlined in the Job Seeker Compliance Framework); or
>
> • The provider took all reasonable action in relation to non-attendance (including submitting a Participation Report to DHS) and following this action were able to re-engage the job seeker back into Work for the Dole activities within 14 days; and
>
> Providers will not receive Work for the Dole Payments if they have not recorded job seeker attendance in the Activity Diary. (at p45)

While the option still exists for the provider to apply discretion to allow an absence – for example if they believe that another engagement strategy would be more effective, or that there may be unidentified issues involved – this will reduce their payment.

Alongside these payment arrangements, a new Programme Management Framework has been put in place which includes, as one of its Performance Targets that:

> All Eligible Job Seeker non-attendance is handled swiftly and appropriately in accordance with Guidelines and the Funding Agreement. This includes:
>
> • 100% of Eligible Job Seeker non-attendance is followed-up with the Eligible Job Seeker and actioned in the IT system on the same day.
>
> • If no Valid Reason or Reasonable Excuse for Eligible Job Seeker non-attendance exists, 100% of Provider Attendance Reports and Non-Attendance Reports are submitted to DHS within 2 business days of non-attendance by Eligible Job Seeker …(PM&C, 2015b)

So while the rules still suggest that providers can choose strategies other than penalising job seekers to re-engage them, both their performance ratings and financial outcomes are reduced as a result. Providers that have adopted different engagement strategies in the past have been forced to use penalties as a first, rather than last resort. However at present DHS's involvement does still operate as a check (albeit inadequate) on penalties.

If providers take over the administration of payments there will be a direct conflict between their financial interest in applying penalties and any obligations that they have to avoid harm to vulnerable job seekers through reducing their income.

Why many providers are frustrated with the current arrangements

Many providers express frustration with the current job seeker compliance arrangements and some (but not all) believe that taking over administration of payments could make things easier for them.

One of the chief frustrations about the current system is the level of administration and data entry required. For example in order to have a 'No Show No Pay' penalty applied to someone who doesn't turn up to their activity, the provider must have created the activity in the IT system, connected the

job seeker to it, included the specific times and dates in the individual's Job Plan and ensured that these did not conflict with other obligations in the agreement. The activity supervisor must then report the captured the 'non attendance', which then gets entered into the system for DHS to consider. After all this work, according to recent information given to Senate Estimates for 2014/15, 27% of participation reports submitted by CDP providers were rejected by DHS[5]. Around 30% of these rejections were for administrative error (for example the activity was not properly reflected in the plan). The administrative burden associated with these processes is substantial (more so since 1 July 2015) and has a substantial impact on who is recruited to work in provider organisations. Providers have reported that they might prefer to employ senior local Indigenous people, but the level of IT and administrative proficiency required means that they must sometimes opt for outsiders. (Note that another reported reason for needing to employ non locals is local people not wanting to be associated with applying penalties). The problem is that it is highly unlikely that any less rigor would be needed if decisions about payments were shifted to providers. All of the current Guidelines and the Performance Framework make it clear that daily monitoring and reporting (via the IT system) underpin the whole system of payment for providers and of performance assessment. In addition, providers decisions would be subject to review by PM&C and ultimately the AAT. Documentation will be needed and procedural flaws (like conflicting obligations) may still lead to rejection of the penalties.

The transfer of decisions to providers will not reduce red tape, but it would almost certainly lead to a significantly higher rate of application of penalties. As discussed, providers have a direct financial interest in ensuring that people are placed in Work for the Dole (rather than assessed as exempt or incapable of participation) and applying compliance measures when they don't turn up. The 27% of provider reports that were rejected last year would, presumably, have been applied by the provider had they been the decision maker. The argument mounted by the Minister is that because providers are 'on the ground' they are better able to understand the circumstances of local job seekers than DHS staff based elsewhere. This view is shared by many providers. Providers cite examples of DHS accepting as reasonable an excuse that a person had no transport in a place where the office was within walking distance of most of the community, or that a person was sick when a staff member saw them at the pub. More seriously, examples have been given of where the failure of DHS to assess people face to face means that people on weekly dialysis, or with untreated schizophrenia, have been subjected to Work for the Dole obligations with which they cannot comply. Lack of local knowledge and face to face contact are serious impediments to the effectiveness of DHS arrangements. However the mere presence of an employment service provider in a region does not mean that its staff are well equipped to apply social security rules to local people. While some staff are highly skilled and have excellent local knowledge, there is also high turnover, there are many non local staff, and many staff have little or no training that might help them identify or manage issues like mental illness, cognitive impairment or personal crises. At least some of DHS' rejections of Participation Reports appear to have been reasonable – for example the 557 instances when there were medical reasons for non attendance and evidence was provided by the job seeker, the 228 instances where the job seeker was working, the 260 instances where there was a legal restriction preventing compliance, or the 37 instances when the job seeker had already been exempted. Cases like these would, presumably, disappear where DHS is not involved in checking. Some job seekers may seek a review by PM&C – although this would be expected to be rare. But it is unlikely that public or job seeker confidence in the fairness of the system will be improved, particularly given the direct link between payments to providers and use of compliance arrangements.

[5] Senate Public Affairs and Finance Legislation Committee, Supplementary Budget Estimates, 19-23 October 2015, Answers to Questions on Notice, Question Reference no.152. Unreasonable here includes unreasonable commute (4.3%), unreasonable requirement (4%) and inappropriate referral (1.6%).

My own view is that providers taking over payments will not resolve many of the current problems and is likely to create new ones. One of the principal reasons for this is that, while providers are capable of employing people and administering wages to employees, the administration of the social security safety net requires more rules, more reporting, and more specialised attention to complex needs. Most providers would prefer to be much less involved in social security administration and much more involved in finding and creating employment than they currently are. While most providers see the need for penalties to be applied in some cases, at the moment they have very limited discretion as to how and when this should occur because of the new financial model. The need for constant compliance monitoring and reporting has driven increased resources in administration, and less opportunity to employ local people with skills to inspire and engage. The compliance system itself is technical and distant, and providers express as much frustration at its inability to help those who need it (eg those with serious problems who should be exempt) as its frustration of attempts to apply consequences to those who deliberately avoid obligations. In my view, long term employment (and social) outcomes for communities would be better served by increasing provider time and energy invested in positive employment and community initiatives, rather than administering income support.

What should be done?

- DHS should retain responsibility for decisions about penalties but it must also ensure that the people making decisions have close working relationships with local providers and good local community knowledge.

- The Guidelines (including financial model) and Performance Framework should be altered to enable providers to choose the engagement strategies that best suit individuals and communities, in consultation with local community members. This might mean, for example, that the formalisation of Job Plans and daily reporting would only occur once the provider has identified that an individual is repeatedly failing to comply and is likely to respond to a penalty.

Taper rates (income free areas)

The legislation introduces new income support taper rates (or income free areas). In the Second Reading speech the Minister says:

> To increase incentives to take up casual and intermittent work when and where it's available, these new measures would allow job seekers in remote income support regions to earn up to the equivalent of minimum wage before their income support reduces

However the proposed arrangements need to be considered in the context of the whole of the rules that will apply, including the penalty regime and the other obligations of income support recipients. It is the interaction between the obligations of income support recipients (currently spelled out in the Funding Deed and Guidelines) and the penalties for non-compliance (to be specified in a later regulation) that will shape the way that the tapering works in practice.

Under the current CDP Guidelines (effective 1 July 2015), people with full time work capacity between 18-49 years old, and who are on full payment, are required to work 25 hours per week, 5 days per week throughout the year (with some allowable breaks). Where a job seeker does paid work it can be counted towards their 25 hours per week activity requirement. Once the job seeker's rate of income support reduces (ie they move onto a part income support payment as a result of the taper rate) they cannot be compelled to Work for the Dole.

In the Explanatory Memorandum, it is made clear that the Government's intention is that where a job seeker does paid work instead of Work for the Dole on a particular day (or hour), then they will lose income support for the time missed:

> If a job seeker undertakes paid work instead of attending their work for the dole activities, they would receive less income support (as penalties are applied) and receive more real income.

In the case of a person with a 25 hour per week work for the dole requirement, this appears to mean that if they fail to attend Work for the Dole for one day (ie 5 hours) – choosing instead to work 5 hours, then their income support will be reduced by the equivalent of one day. In order to retain their full benefits and avoid a penalty, they would have to work their full Work for the Dole hours and do any additional employment hours on top of this. By contrast, under the existing guidelines, if the person has moved on to a part time rate of income support, the overall Work for the Dole hours requirement would reduce[6].

Table 1 presents 4 scenarios to illustrate the effect of the new arrangements compared to those currently in place. A minimum hourly wage of $17.29 per hour is assumed. Each scenario is based on a single Newstart recipient without dependents – the group most likely to benefit from more favourable taper rates. For simplicity, the scenarios are based on additional hours worked over a fortnight – although it is recognised that the expectation is that income support may be paid weekly.

In scenarios A and B the new arrangements would mean higher overall fortnightly income.

Scenario A reflects the sort of 'top-up' arrangement that the Minister has referred to in public statements about CDP. A person is 'working for the dole' – perhaps with the local council 25 hours per week, 5 hours a day, and the 'host' employer might offer an extra hour each day as paid work. In this case the participant would take home $172.90 per fortnight wages under the new arrangements and experience no loss of income support. Under the current arrangements, they could lose $35.45 from their benefits for that fortnight because of the existing taper rates. However they can also count their 5 hours towards their 25 hour per week 'mutual obligation' requirement, so that the total hours worked over the fortnight across both paid work and WfD would be 50 (see Column V)[7]. So under the new rules the job seeker would earn more over the week, but would earn less per hour - Column VI in the table shows the 'implied hourly wage rate' for all hours worked (paid and Work for the Dole).

Scenario B shows what would happen under the new arrangements if a person is working 13 paid hours per week on top of their 25 hours Work for Dole - something that would require working a 38 hour week under the rules suggested in the Explanatory Memorandum. Here, the new arrangements would be significantly better in terms of overall take home income (although note that there may be some losses from income tax), but the implied hourly rate of $13.08 is well below the minimum wage. Over a year, the new arrangements would allow the job seeker to earn $25,837 working 38 hours per week, of which $11,688 would be wages paid by an employer. This raises the question of what scenarios might enable remote income support recipients with WfD obligations to earn the $650 per week ($33,800 per annum) income free area.

[6] There are problems in the operations of these rules in practice. They rely on income being reported and obligations being properly adjusted in the IT systems. I am advised that often people on part payments are showing up in the systems as having full time Work for the Dole requirements..

[7] For this scenario I have assumed that that the person would remain in WfD – although once they move onto part payment other activities can be used to make up the mutual obligation requirement.

Scenarios C and D look at what I consider to be a more likely pattern – one in which, where people are offered extra paid work, they do that *instead of* their WfD – at least on that day. One of the reasons that this is most likely is the requirement that WfD be arranged over 5 days per week. If a person was offered a day's work and wanted to keep their full income support payment, they would have to attend Work for the Dole *and* their paid job on that day (unless one or other was at night or the weekend). Many people would have practical obstacles to achieving this – transport, length of the working day, rigidity of work schedules, childcare arrangements. It may be that the employer offering the waged work is the same one as that hosting Work for the Dole, which would reduce these problems. But, given this employer can already access that worker's labour for 25 hours per week free of charge, they would generally have little reason to offer paid employment. Under Scenarios C and D the new arrangements would be less favourable, both in terms of total payments and implied hourly rate because of the penalties which would apply. Currently, those who are on part payment cannot be compelled to WfD and can include their paid work in their notional 25 hours activity. They are much less likely to have a problem meeting both their paid and their WfD work obligations. Based on the information provided, the penalties that would apply to people who elected to take up paid work in place of Work for the Dole on a given day (or week) would far exceed the effect of the taper rate.

Those who are unwilling to work 25 hours for around $10.50 per hour *as well as* doing paid work during a working week appear to be worse off under these arrangements. For these people – those who we might hope could secure a permanent foothold in the labour market over time - leaving income support (and CDP) may be preferable to being forced to work 25 hours for the dole on top of their paid work - even if they are taking home less income overall. An unintended consequence of the policy may be that those who can most benefit from assistance (like training and wage subsidies) will disengage from it.

What should be done?

The proposed taper rates would improve earning capacity for some people in remote communities but – if the current rigidity around Work for Dole is retained – will reduce income for many others. They would worsen the current position where people in remote areas are expected to work more hours to 'earn' their income support than their non remote counterparts.

If these issues were resolved and more favourable arrangements income withdrawal arrangements are to be applied, it seems somewhat odd that the proposal be limited to declared remote regions when the arguments provided might equally apply across most remote areas (and in fact across many parts of the country).

- Hours of paid employment that worked in place of Work for the Dole should count towards the required 'Work for the Dole' hours, not – as suggested in the Explanatory Memorandum – lead to cutting income support for that period.
- Provided that this occurs, if more generous taper rates are to be provided, then they should be provided more broadly than simply in declared regions.

Conclusion

One of the questions that needs to be asked of mutual obligation arrangements is whether the obligations of citizens are proportionate to the opportunities and assistance they receive. In my view, the CDP is currently failing that test. Thousands of people are being penalised each week, but many fewer are being assisted to find sustainable work. The energies and efforts of providers are

being directed into 'managing mutual obligation' rather than helping people into work, or into a 'life they that have reason to value'. The obligations of CDP participants – who are mostly Indigenous - are more rigid and more onerous than those of their - mostly non Indigenous - counterparts. The systems that are designed to protect the most vulnerable are doing less to prevent harm in communities that are likely to need it most. And while the initial RJCP was described by its proponents as providing greater flexibility for communities and providers, what we have seen in practice is a rise of centrally driven prescriptions – like 25 hours Work for the Dole and a new financial model that inhibits discretion – 'one size fits all' solutions to very different, very complex local challenges.

This Bill does address these problems and may make some worse. The things that meant that CDEP was accepted as fair: an equal wage, rewards for extra effort, community control, access to the safety net for those who need it – are absent from the CDP and from this Bill. I hope that the Committee will take this opportunity, not just to recommend against this Bill, but to closely examine the impact and fairness of the existing CDP arrangements.

Taper rates scenarios (Table)

Table 1

		I	II	III	IV	V	VI	
	Scenario (working week)	Wages (fn)	Benefits (fn)	Total (fn before tax)	Effect of taper or penalties (fn)	Total fn hours worked	Implied hourly wage (ie. total income divided by total hours worked for wages or income support)	
A	Current if work 5 hours pw	$172.90	$ 508.75	$681.65	-$ 35.45	50	$13.63	5 hours should be able to be counted towards 25 hours
A	Proposed if 5 hrs pw extra + 25 hours WfD	$172.90	$544.20	$717.10	0	60	$11.95	5 hours does not count to 25 hours
B	Current if work 13 hours pw paid (25 hour week)	$449.54	350.676	$800.22	-$193.52	50	$16.00	13 hours counts
B	Proposed if work 13 hrs pw extra (ie 38 hour week)	$449.54	$544.20	$993.74	$0.00	76	$13.08	13 hours does not count
C	Current if work 2 days WfD and 15 hours paid (25 hours work)	$518.70	$309.18	$827.88	-$235.02	50	$16.56	Cant be compelled to work 25 hours WfD
C	Proposed if work 2 days WfD and 15 hours paid (ie 25 hr week)	$518.70	$217.68	$736.38	-$326.52	50	$14.73	lose 3 days Newstart pw
D	Current if work 3 days WfD and 10 hours paid	$ 345.80	$ 412.92	$ 758.72	-$131.28	50	$ 15.17	Cant be compelled to work 25 hours WfD
D	Proposed if work 3 days WfD and 10 hours paid (25 hours)	$345.80	$326.52	$672.32	-$217.68	50	$13.45	lose 2 days Newstart pw

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Attachment – Fowkes submission

Finance and Public Administration Committee inquiry into the Social Security Legislation Amendment (Community Development Program) Bill 2015

Financial penalties under the Remote Jobs and Communities Program

A report prepared for Jobs Australia by
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Centre for Aboriginal Economic Policy Research, ANU

In July 2013 a new Commonwealth funded labour market program was implemented across remote Australia -the Remote Jobs and Communities Program ('RJCP'). According to the then Labor Government, the new program was designed to accommodate the specific circumstances of remote communities, particularly for Indigenous people who represent around 85% of its client base. Over the two years from the beginning of the program until its 'reform' in July 2015, the rate of penalties applied to RJCP job seekers grew substantially, both in raw numbers and as a percentage of all penalties applied to all job seekers. In this period over 47,000 financial penalties were applied to a caseload of around 37,000 people. Over 6700 of these penalties fell into the category of 'serious failures', attracting a penalty of 8 weeks without income support. This paper sets out the available public data on these trends and suggests some likely causes. Towards its conclusion, it points to the likely additional impact of the most recent set of reforms to the program which took effect on 1 July 2015, which were marked by the renaming of the program to the 'Community Development Programme' or 'CDP'.

Rate of financial penalties applied to RJCP participants

At 26 June 2015 there were 36,803 people in the Remote Jobs and Communities Program, of whom around 83% identified as Indigenous[1]. They represented around 4%-5% of the total national caseload in employment programs, and around 26% of the Indigenous-identified caseload across employment programs[2].

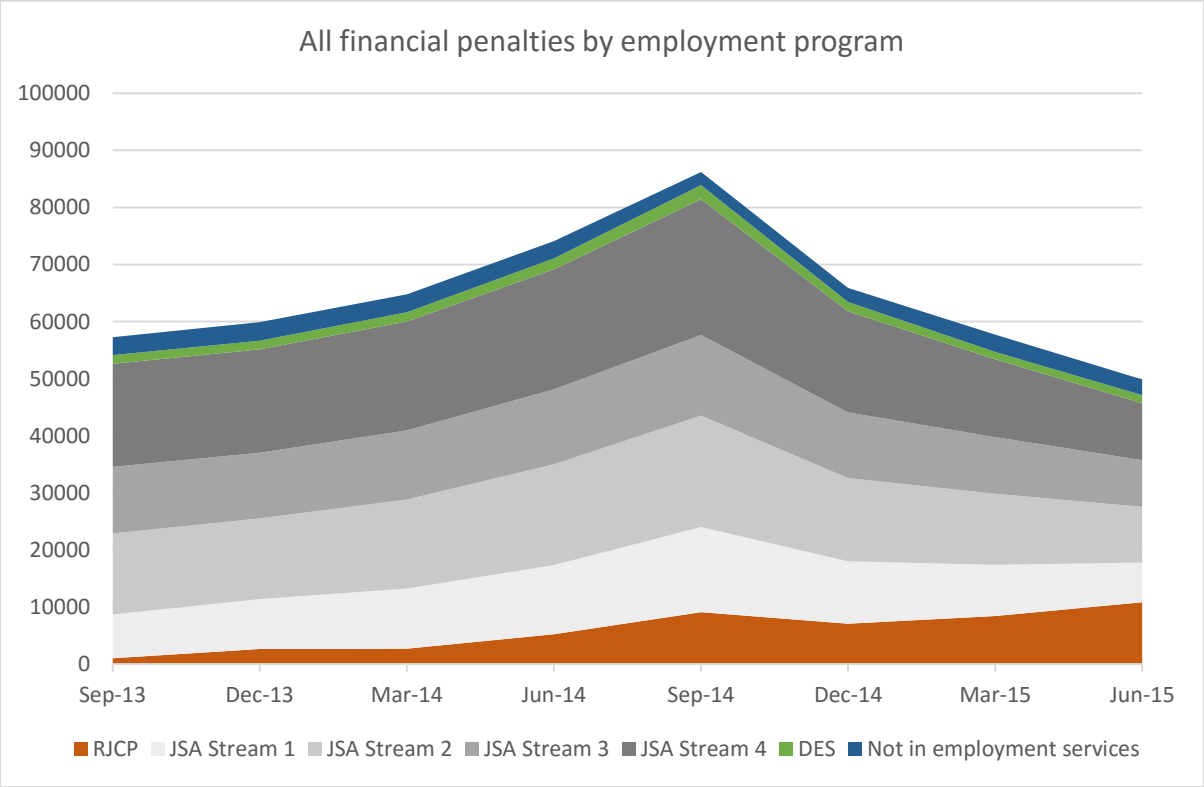
After the end of each quarter the Department of Employment publishes information about financial penalties applied to income support recipients under social security legislation (DoE, various dates)[3]. This includes information about the number of penalties applied to people (officially and hereafter called 'job seekers') in the RJCP. Examination of this data over the two years from the start of the RJCP on 1 July 2013 suggests that the pattern and rate of financial penalties in RJCP were significantly different from under its major non-remote equivalent – Job Services Australia ('JSA')[4].

From 1 July 2013 to 30 June 2015, JSA accounted for most job seeker financial penalties applied under social security legislation as shown in Figure 1. JSA was, until its replacement by 'jobactive' in 1 July 2015, the main employment program applying in non-remote areas, with a caseload of around

[1] Senate Public Affairs and Finance Legislation Committee, Supplementary Budget Estimates, 19-23 October 2015, Answers to Questions on Notice, Question Reference no 143.
[2] Estimates based on reported RJCP caseload at 26 June 2015 (Senate, ref 143), reported Indigenous JSA caseload at March 2015 in Hartsuyker (2015), reported DES caseload at http://lmip.gov.au/default.aspx?LMIP/DisabilityEmploymentServicesData . The most recent data suggest that CDP clients represent around 3.8% of the national employment program caseload, but the authors note a recent Departmental estimate of 5% of national caseload.
[3] Job seeker compliance data is published at https://www.employment.gov.au/job-seeker-compliance-data
[4] At the point of writing this was the full extent of published compliance reports. 30 June 2015 also marked the end of JSA and the end of the first iteration of RJCP – in some senses a 'natural' end point for this analysis.

760,000[5]. Over the two years shown, financial penalties in JSA reached a peak in the quarter ending Sept 2014 but then halved over the rest of the 2014/15 financial year. By contrast, in RJCP there was an initial drop in the number of penalties applied after September 2014, but they rose again in 2015. In the final quarter to the end of June 2015, twenty two per cent (22%) of all financial penalties were applied to RJCP participants, over four times their representation on the overall job seeker caseload (Figure 1).

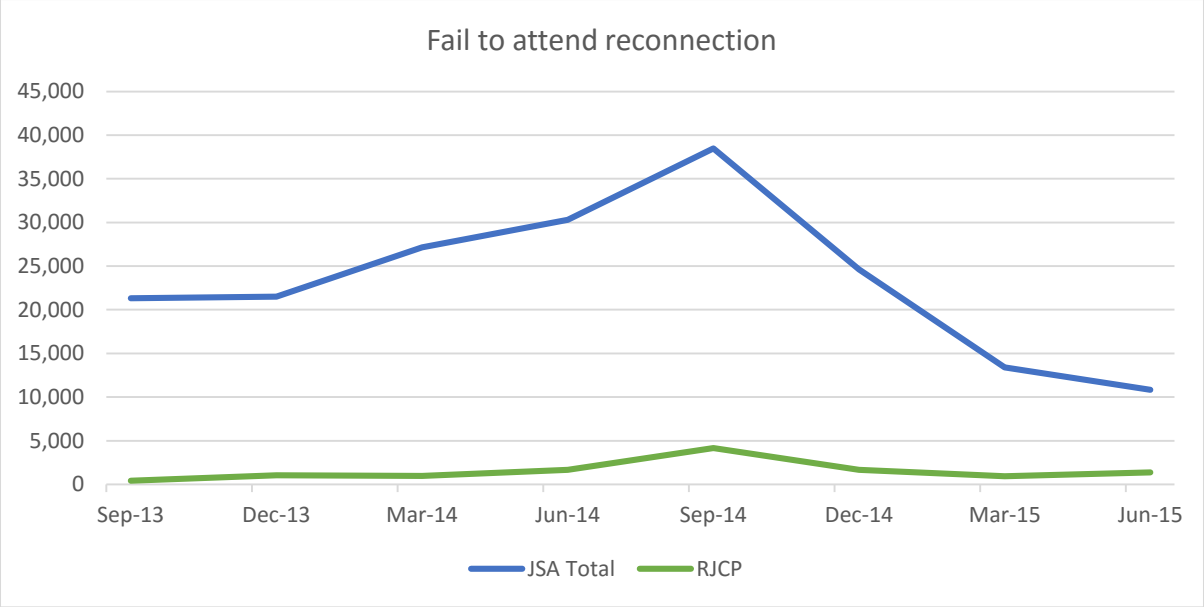
Figure 1 All job seeker penalties by employment program



The principal explanation for the decline in overall penalties in JSA after September 2014 appears to have been a change in the process used to re-engage job seekers after they had failed to attend an appointment with their employment services provider. From September 2014 when job seekers missed their regular appointment with their employment services provider, instead of contacting the Department of Human Services ('DHS')[6] to arrange a 'reconnection appointment' (and to reinstate income support), they contacted the provider directly. This drove a large decline in 'reconnection' penalties (ie those incurred for non-attendance at a reconnection appointment) as shown in Figure 2. In JSA, these penalties declined by 72% from the first to the fourth quarter of the 2014/2015 financial year, while in RJCP they dropped by 66% over the same period.

[5] Answer to Question on Notice Senate Standing Committee on Education and Employment Supplementary Budget Estimates EMSQ15-000373 – jobactive caseload was 757,582 at October 2015.
[6] Widely known as 'Centrelink'. Centrelink became part of the Department of Human Services in 2011.

Figure 2 Reconnection penalties JSA and RJCP



The impact of this change on total financial penalties applied in RJCP was much less than that in JSA for two reasons: the drop in reconnection penalties was lower (66% drop in RJCP compared with 72% in JSA); and reconnection penalties represented a smaller proportion of total financial penalties applied under that program (Table 1).

Table 1 Composition of penalties applied July 2013 to June 2015, JSA and RJCP

	JSA	RJCP
Reconnection penalties	43.4%	25.9%
NSNP (activity related) penalties	42.4%	59.7%
Serious failures (all)	12.6%	14.2%
Other financial penalties	1.6%	0.2%
Total	100.0%	100.0%

For RJCP job seekers, the decline in reconnection penalties over the year to June 2015 was more than offset by a substantial rise in the largest category of RJCP penalty - No Show No Pay (activity related) penalties (Figure 3)[7]. These penalties were applied where a job seeker did not attend an activity – for example a Work for the Dole project, training session or similar - that was included in their individual plan (or Employment Pathway Plan (EPP)[8]); where they did not provide a reasonable excuse for non-attendance; where the provider advised DHS of the 'failure'; and DHS applied the penalty. No Show No Pay failures attracted a penalty of one tenth of an individual's fortnightly income support payment for each day of non-attendance.

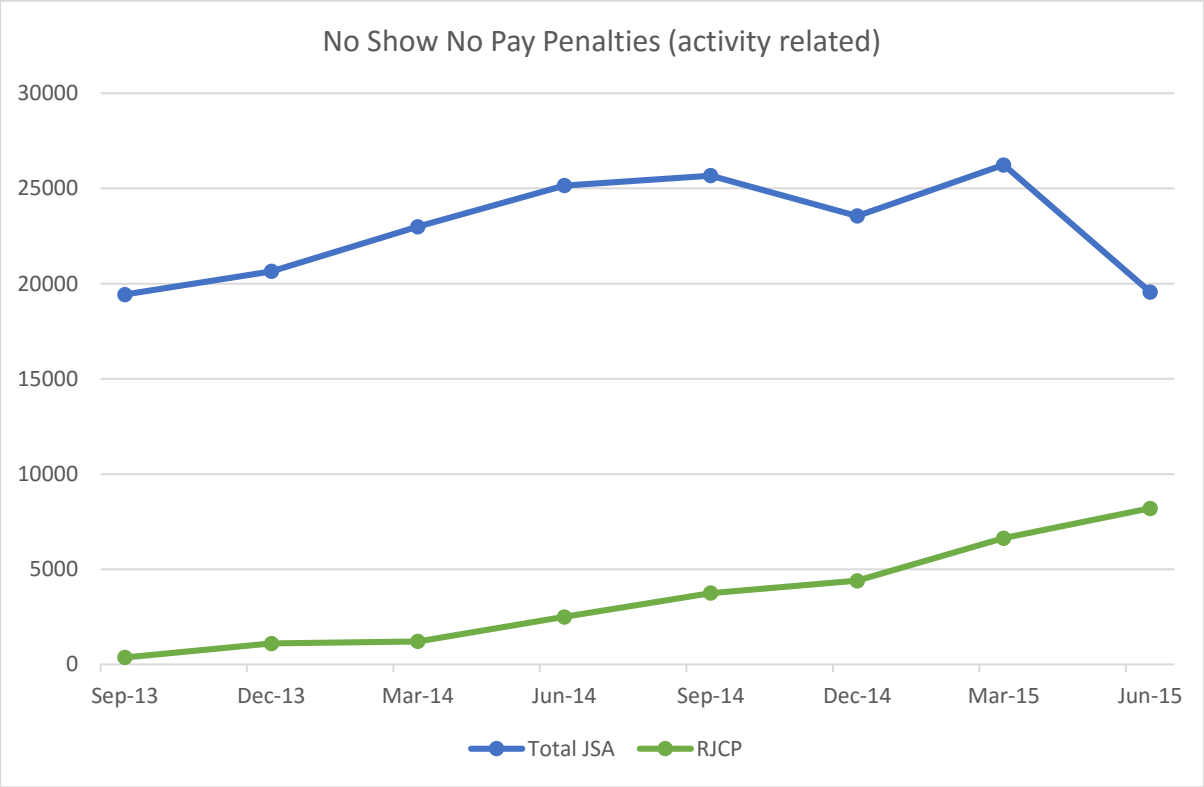
Figure 3 shows numbers of RJCP and JSA clients who received a No Show No Pay (activity related) penalty over the two years to 30 June 2015. There was a noticeable drop in these penalties in JSA in the final quarter (to end June 2015) which is likely to have been the result of reduced compliance

[7] No Show No Pay penalties may also be applied in other circumstances – for example for failing to attend a job interview – however these other categories account for less than 2% of penalties overall, and less than 1% in RJCP, so have been disregarded here for greater simplicity.

[8] 'Employment Pathway Plan' is the term used in Social Security legislation, however these agreements were known as 'Individual Participation Plans' in RJCP, and are now known as 'Job Plans'.

activity as job seekers and providers moved across to the new 'jobactive' program[9]. However even if this June 2015 quarter is excluded from analysis, over the full year to March 2015, No Show No Pay (activity related) penalties increased fivefold in RJCP while remaining steady in JSA. Over the full year to end June 2015, nearly 23,000 penalties were applied to RJCP job seekers for not attending their activities. This category of penalty accounted for 60% of all penalties applied under RJCP over the full two years (Table 1), rising to 76% in the June 2015 quarter.

Figure 3 No Show No Show penalties - fail to attend activities



The third major category of financial penalty applied to RJCP participants was that arising from 'serious failures'. There are two types of 'serious failures': those that are work related, including refusing a suitable job or misconduct leading to loss of employment; and those that relate to 'persistent non-compliance' with program requirements. DHS consideration of application of a serious failure penalty for 'persistent non-compliance' is automatically triggered when a job seeker has incurred three other financial penalties (for example for non-attendance at reconnection appointments or activities) within a six month period. If these lower level penalties are applied to a group at a higher rate, this eventually flows into the rate of 'persistent non-compliance' penalties for that group. Serious failures incur a penalty of 8 weeks without income support[10].

[9] The letting of the new jobactive contracts – which took effect from 1 July 2015 – meant that providers changed in many locations and that both providers and DHS were engaged in the process of moving job seekers across to the new program.

[10] Eight week penalties may be waived in cases of financial hardship, although this is relatively rare – over the year to 30 June 2015, only 238 waivers were granted (1%). The client may also 'work off' their penalty by working an additional 25 hours per week for 8 weeks. 77% of serious penalties were 'worked off' over the last year, although figures for RJCP clients – who already had a higher weekly work requirement – were not available. It is unclear how the new 25 hour per week requirement will impact on the ability to work off 8 week penalties.

Figure 4 shows that the rate of work related serious penalties applied across both RJCP and JSA job seekers remained fairly steady over the two years under consideration. But there was an increase in penalties for 'persistent non-compliance' applied to RJCP job seekers, coinciding with a marked decrease in these penalties applied in JSA. In the June 2015 quarter, 36% of all penalties for 'persistent non-compliance' with program requirements were applied to RJCP job seekers – more than seven times their representation on the overall caseload.

Figure 4 Serious penalties applied in RJCP and JSA compared

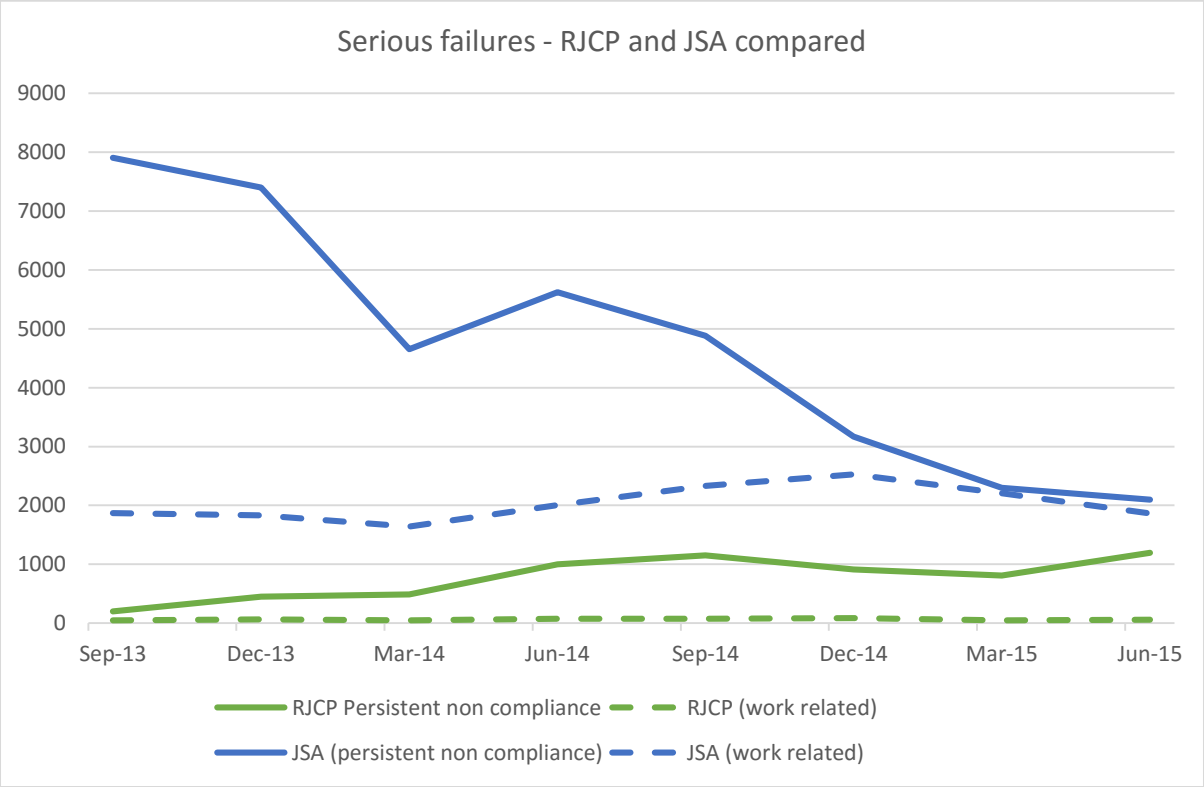
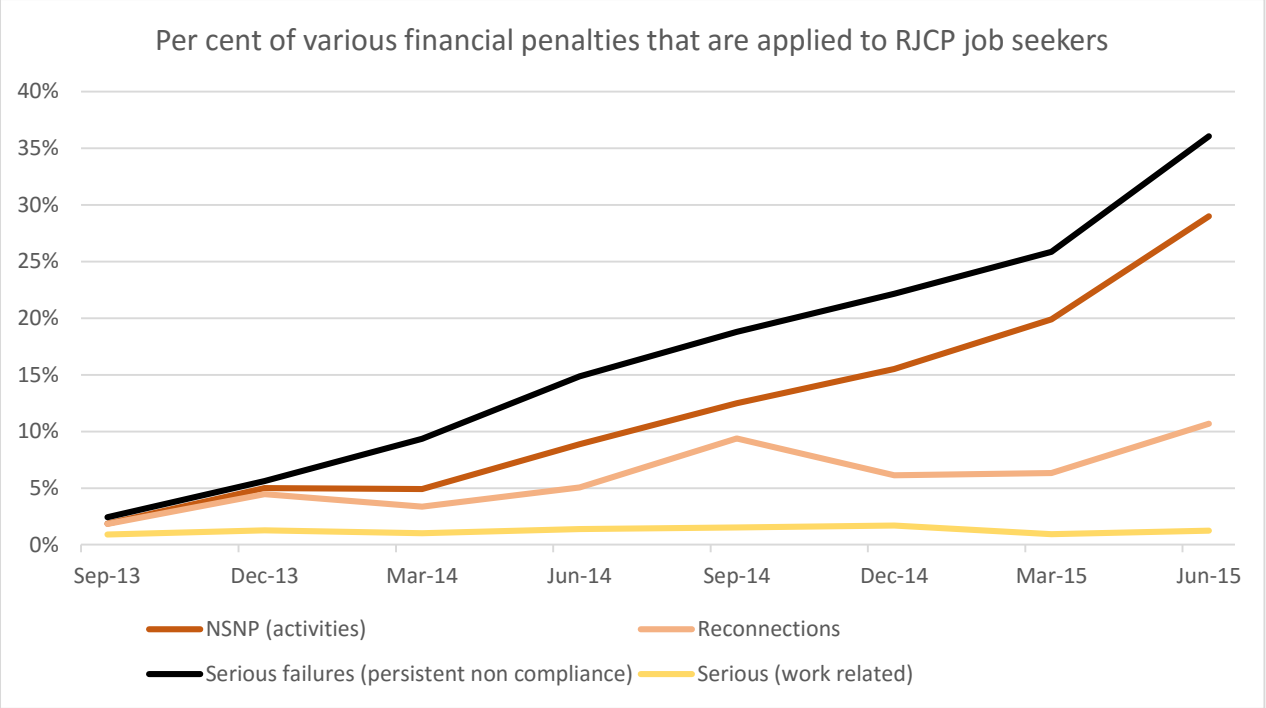


Figure 5 shows the percentage of each of these major categories of penalties that were applied to RJCP clients. It shows that they have become substantially over represented across all major categories of penalties except those that related to refusal to work, where they were less likely to incur a penalty. Most striking is the rate at which RJCP job seekers have become penalised for persistent non-compliance with program rules.

Figure 5 Proportion of financial penalties applied to job seekers in RJCP (various categories)



What is going on?

Over this two year period the pattern and rate of penalties applied to job seekers in RJCP has differed substantially from that applied to those in JSA despite the fact that the same social security rules – the 'job seeker compliance framework' - applied to both. Three likely contributing factors to this variation are identified here: (1) more onerous program requirements in RJCP (2) ineffectiveness of protections for remote job seekers and (3) local responses to program obligations.

1. More onerous program requirements

Reference was made earlier to job seeker plans, or 'EPP's that set out what each individual must do in order to receive income support payments[11]. The power to make these agreements has been delegated to contracted employment services providers[12]. However the content of these plans – in particular, the level of program participation that is required of job seekers - is largely prescribed by program rules which are included in employment services contracts and Government issued guidelines.

The program rules for RJCP providers from July 2013 specified that agreements with job seekers had to include monthly appointments and could include job search where labour market opportunities were available. In addition, the rules stated that:

[11] Those with participation requirements are, currently, people on Newstart, Youth Allowance (Other)(ie not students), Parenting Payment recipients with a youngest child of 6 or older, DSP under 35 with compulsory requirements, and Special Benefit recipients subject to an Activity Test.
[12] Guide to Social Security Law 3.2.8.30 at http://guides.dss.gov.au/guide-social-security-law/3/2/8/30

> Under RJCP, job seekers *must* participate in activities on an ongoing basis (eg each fortnight). As a guide, the level of fortnightly participation that is typically expected of job seekers is as follows:
>
> • full time activity tested job seekers: activities of around 40 hours per fortnight (and, as appropriate, job search)
>
> • principal carer parents: activities of around 20 hours per fortnight (and, as appropriate, job search)
>
> • job seekers with a partial capacity of at least 15 hours per week to work or temporary reduced work capacity of at least 15 hours per week: activities of around 20 hours per fortnight or to their capacity (and as appropriate, job search).
>
> (DEEWR, 2013: p4) [emphasis in original]…

This was a more onerous activity requirement than that placed on JSA clients in similar circumstances (refer Table 2)[13]. In particular, while most RJCP job seekers were required to do some form of 'activity' for around 20 hours per week on a continuous basis from the time they started in the program, most JSA job seekers were only required to participate in regular weekly activities after 12 months in the program, and then for up to 15 hours per week for six months of the year[14].

Table 2 Mutual obligation requirements across programs

JSA (2010-June 2015)	RJCP (July 2013- June 2015)
Appointment frequency generally monthly, bimonthly during 'Work Experience' stream.	Monthly appointments.
After 12 months, or 18 months for Stream 4, enter Work Experience stream, which could include training, voluntary work, 'group activities' – like Work for the Dole or similar.	Activities from day one - 'typically' 40 hours per fortnight, with a minimum of 30 hours per fortnight for those in structured (group) activities.
Once in Work Experience Stream: 21-39 years – 390 hours over 26 weeks if group activity (approx. 15 hours per week). Less if training, voluntary or paid work.	As above
Once in Work Experience Stream: 40-49yrs 150 hours over 26 weeks (approx. 11.5 hours per fortnight)	As above
Early school leavers who are 22yrs or less - 25 hours per week	Early school leavers who are 22yrs or less - 25 hours per week
Once in Work Experience Stream: Principal carers or people with reduced capacity, 150 hours over 26 weeks (approx. 11.5 hours per	Principal carers or people with reduced capacity, 20 hours per fortnight

[13] The exception was Early School Leavers 22 years old or less

[14] In fact it appears that relatively few JSA job seekers were referred to group activities which had this mandatory hours requirement. Most were referred to training, voluntary work, part time work, or some other form of activity (OECD 2012, p.106). The scope to do this was there in RJCP, but the Departmental emphasis, particularly following the September 2013 change of Government, was on structured activities.

fortnight)	
After 2 years in program can be required to do Work Experience activities for 11 months of the year where provider considers this beneficial	Year round activity requirements start from day one

The fact that RJCP job seekers were expected to attend activities more often, and from an earlier stage, than their counterparts in JSA could have been expected to flow into a higher rate of application of penalties for non-attendance at activities, simply as a result of there being more opportunities in each week for them to 'fail'. Figure 5 shows that, by the end of the first year of RJCP (June 2014), the proportion of 'activity related' penalties being applied to job seekers in RJCP was significantly above their representation on the caseload at 9% (compared with 4-5% of caseload). But the rate of these penalties did not stabilise at this level, instead it continued to climb over the following year, with the greatest acceleration occurring in the first half of 2015. Over this period, while there was not major change to the rules in RJCP, the election of a Coalition Government in September 2013 brought with it an increased emphasis on 'structured activities' as the primary form of RJCP activity, reflected in increased contract manager monitoring and attention. 'Structured activities' (or 'Work for the Dole') were distinguished from other activity options by the requirement for direct supervision of job seekers and the need to record and report daily attendance via timesheets, making it easier to track and report non-compliance. The sharpest increase in No Show No Pay penalties in RJCP followed the Minister for Indigenous Affairs' announcement in December 2014 that, from 1 July 2015, activity requirements would become even more stringent, moving to 25 hours per week Work for the Dole, spread over 5 days per week, throughout the year and that provider fees would be linked to daily attendance in these activities (Scullion 2014, PM&C 2015a). In the six months leading up to the implementation of the new rules, 14,835 No Show Now Pay (activity related) penalties were applied in RJCP, compared to 8,149 that were applied in in the previous six months.

While the more onerous activity requirements from day one of RJCP laid a foundation for higher penalties, the policy signals of the Minister and his Departmental officials over 2014 appear to have been extremely important in driving provider behaviour. The combination of more onerous requirements and Government focus have driven a substantially higher rate of No Show No Pay penalties, and, in turn, penalties for persistent non-compliance than that applied to other job seekers, despite the fact that the social security rules that applied were the same.

2 Protections for remote job seekers

As income support payments have become more 'conditional' upon meeting program obligations, Governments have also (sometimes under pressure) put in place a series of protections for unemployed people who face losing their income support. While negotiation, monitoring and reporting on individual job seeker obligations is principally undertaken by contracted employment service providers, the Department of Human Services (DHS) makes final decisions as to whether penalties should be applied. It is responsible for administering processes that are meant to ensure that obligations are fair, reasonable, and that the withdrawal of income support does not cause undue harm to those affected.

When providers report apparent compliance failures to DHS (a 'participation report'), DHS undertakes a series of checks before applying a penalty – for example it must verify that the job seeker was notified of, and understood their obligations and that the obligations were reasonable. In the year to June 2015, RJCP providers submitted 42,534 participation reports, of which 27% were

rejected by DHS[15]. Remote providers have often expressed frustration at this process, perceiving it to be overly bureaucratic, and arguing that the people considering what 'excuses' may be reasonable have little familiarity with the location, let alone the individual job seekers (see, for example Disney et al (2010) at p72). Despite this, over the 2014/2015 financial year DHS was less likely to reject participation reports submitted by RJCP providers than other providers (27% rejection rate in RJCP, compared with 35% across employment services). Around 30% of these rejections were for administrative error (for example the activity was not properly reflected in the plan). Others were more substantive – for example DHS acceptance that there was a reasonable excuse (eg a medical condition (11.5%), bereavement (6.1%), caring responsibilities (4.1%); or because the activity requirement itself was considered unreasonable (10%)[16].

Protections for more vulnerable people rely on a series of assessments that are made by DHS of the work capacity and personal circumstances of individuals. When people apply for income support DHS administers a questionnaire designed to identify obstacles that they might face to employment - the 'Job Seeker Classification Instrument' ('JSCI')). This in turn, may trigger referral for a more detailed assessment of work capacity – an Employment Services Assessment (ESAt) - designed to ensure that the employment and program expectations of individuals are reasonable given their health issues, disabilities and circumstances[17]. DHS may also attach a 'Vulnerability Indicator' to the job seeker's record, alerting DHS and provider staff that the job seeker's circumstances may impact on their ability to meet program obligations. Following this initial assessment, providers can also identify any other, or new, circumstances that might impact on participation, again triggering referral for an ESAt.

These systems are designed to ensure that the overall requirements of individuals are reasonable, particularly in cases where people have a disability (for example a cognitive impairment), mental or other health problems or are experiencing personal crises – like homelessness or domestic violence.

ESAts are designed to be conducted face to face by a health or allied health professional[18]. In the period from 1 July 2015 to 31 October 2015, 79% of all ESAts were conducted face to face (including via videoconference), but only 35% of ESAts involving RJCP (now named CDP) clients were face to face or via videoconference[19]. Seventeen per cent (17%) of ESAts in relation to RJCP clients over this period were conducted solely by reviewing evidence held on file. Interpreters were used on only 9 occasions over this period - 1.7% of ESAts conducted with RJCP clients - despite the high proportion of clients for whom English is not their first language[20]. The efficacy of assessments may also be affected by lack of access to professional and community services in remote areas (Disney 2010 p75). DHS assessors rely heavily on evidence provided by health and other treating professionals, particularly where assessments are not face to face. Problems in accessing these services means

[15] Senate Public Affairs and Finance Legislation Committee, Supplementary Budget Estimates, 19-23 October 2015, Answers to Questions on Notice, Question Reference no.152

[16] Senate Public Affairs and Finance Legislation Committee, Supplementary Budget Estimates, 19-23 October 2015, Answers to Questions on Notice, Question Reference no.152. Unreasonable here includes unreasonable commute (4.3%), unreasonable requirement (4%) and inappropriate referral (1.6%).

[17] Refer section 1.1.E.104 Guide to Social Security Law. In JSA or jobactive this may include referring to an assistance 'stream' with a stronger focus on non vocational assistance or to Disability Employment Services. A Job Capacity Assessment may also be conducted to consider the impact of health or disabilities on eligibility for the Disability Support Pension (s 1.1.J.10 Guide to Social Security Law).

[18] See Guidelines for ESAts and JCA published at http://www.humanservices.gov.au/spw/corporate/freedom-of-information/resources/disclosure-log/2013-01-10-guidelines-and-mandatory-requirements-for-jca.pdf

[19] Senate Public Affairs and Finance Legislation Committee, Supplementary Budget Estimates, 19-23 October 2015, Answers to Questions on Notice, Question Reference no.146.

[20] Senate Public Affairs and Finance Legislation Committee, Supplementary Budget Estimates, 19-23 October 2015, Answers to Questions on Notice, Question Reference no.147.

that participation barriers faced by remote Indigenous people may not be properly identified or documented. The Department of Employment itself identified these issues in a 2012 report in which it attributed substantial under-representation of remote Indigenous people in Stream 4 of JSA (the stream reserved for most disadvantaged clients) to failure to interview face to face and to lack of non-vocational services in remote areas (DEEWR 2012, pp.31–33).

There is a further safeguard in the job seeker compliance framework that operates before application of an (8 week) serious penalty for 'persistent non-compliance'. Before this penalty is applied, a specialist DHS officer (generally a social worker) must conduct a Comprehensive Compliance Assessment (CCA). The CCA is designed to examine the reasons for non-compliance including any underlying personal or health issues affecting the individual that may have contributed to their non-compliance. Where DHS finds that a job seeker has persistently failed to comply, and has done so 'intentionally, recklessly or negligently' then an 8 week penalty can be applied. Alternatively, DHS may: refer the job seeker for an ESAt; change the job seeker's service stream (JSA only); make another decision (like altering the EPP, or referring to alternative assistance services) (called an 'other outcome'); or make a finding that the conditions for finding persistent non-compliance are not there ('no outcome')[21].

Table 3 shows that where RJCP clients were referred for CCAs during the 2014/2015 financial year, DHS was significantly more likely to make a finding that persistent non-compliance had occurred than in other cases (65.5% vs 44.7%). DHS was much less likely to refer RJCP job seekers to other forms of assistance or support ('other outcome') (25% vs 38.5%).

Table 3 Outcome of Comprehensive Compliance Assessments

Outcome of Comprehensive Compliance Assessments FY2014/2015				
	RJCP		All	
	n	%	n	%
Referral for ESAt	nd*	nd*	2586	6.9%
Stream changed**	0	0	329	0.9%
Other outcome	1587	25.5%	14391	38.5%
No outcome	515	8.3%	3339	8.9%
Persistent non compliance	4073	65.5%	16713	44.7%
Total	6,215	100%	37,358	100%

*No data is available as the number in each quarter was less than 20
**RJCP does not have service streams
(Source: DoE, Quarterly job seeker compliance data 2014, 2015)

This is a surprising finding, given the high rates of prevalence of the sorts of personal factors that could lead to non–compliance in remote communities, issues like mental illness, substance abuse and personal violence. As with ESAts, the means of assessment may be important. Table 4 shows that CCAs were almost never conducted face to face for RJCP clients (1.1%). Again, we suggest that failure to properly identify and document underlying issues is a significant contributor to worse outcomes for RJCP job seekers through CCAs.

Table 4 Delivery method of CCAs

CCA Delivery Method for FY 2014/2015

[21] See http://guides.dss.gov.au/guide-social-security-law/3/1/13/70

	Other programs		RJCP		Total	
CCA Delivery Method	Total	%	Total	%	Total	%
Face to face interview	3,902	12.8%	65	1.1%	3,967	10.8%
Phone interview	26,530	87.2%	6,107	98.9%	32,637	89.2%
Total	30,432	100.0%	6,172	100.0%	36,604	100.0%

In 2010, one year after the introduction of most of the elements of the current job seeker compliance framework, an independent review was conducted of its efficacy (Disney et al, 2010). At that point the review panel expressed concern over the operation of protections in the framework in remote areas:

> The new compliance system faces great difficulties in remote areas, especially in relation to Indigenous people. While some of its innovative safeguards are preventing hardship which might otherwise have occurred, there is a clear risk that Participation Reports and participation failures will continue to accumulate for reasons which have more to do with the dearth of opportunities and services in these areas than with recalcitrance on the part of job seekers.

And further that:

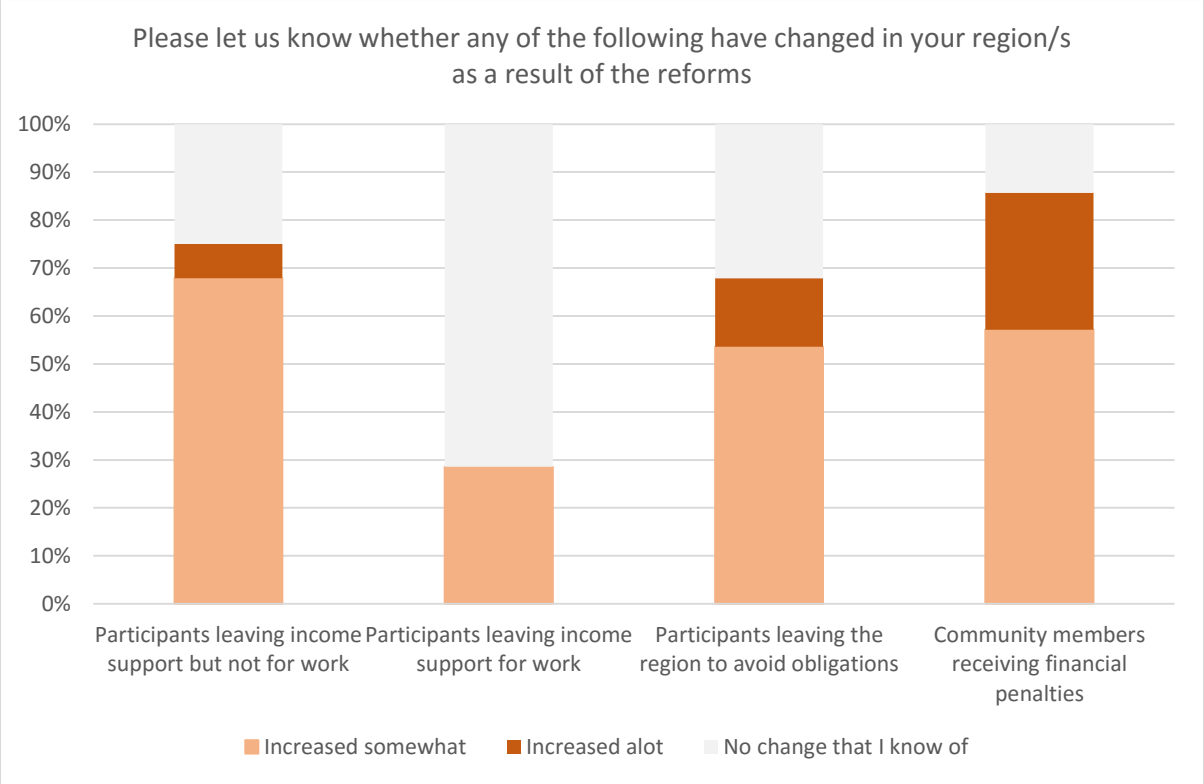
> It is clear that shortages of non-vocational services are greatly weakening the efficacy and fairness of the compliance system in many regional areas.

The protections that are in place to ensure that unemployed people are not subject to harsh or unreasonable penalties rely on the effective operation of communications, assessment and treatment services in the places that they live. The lack of these services in many remote areas appears likely to be contributing to higher penalty rates through imposition of unreasonable requirements on people who have significant non-vocational barriers, and the failure of measures designed to prevent harsh penalties applying to the most vulnerable.

3. Individual responses to program requirements

As discussed in the previous section, non-compliance with program requirements may be because of the difficulties faced by individuals in meeting them, but there is also evidence that some people are more actively rejecting or resisting these requirements. In response to a recent survey conducted by one of us for the two employment service provider peaks, many RJCP providers reported that the latest reforms to the RJCP program were not just generating increased penalties, but also increasing the numbers of RJCP job seekers leaving income support (but not for work), or leaving the region to avoid RJCP obligations (see Figure 6).

Figure 6 RJCP provider survey results - impact of 'reforms'



N=28 of possible 38 providers
No respondents reported decreases

The withdrawal of people from income support has also been noted in media reports over the 2013-2015 period (eg Betts 2015, Rothwell 2015, Wahlquist 2015, Wild 2013). In 2012, the then NT Co-ordinator General for Remote Services identified significant disengagement from income support in the NT, noting that:

> According to the Census a large and increasing part of the Aboriginal population do not regard themselves as part of the labour force, particularly young men between 15 and 24 years of age. (Havnen, 2012: 176).

As Havnen herself suggested, further research is needed to uncover the level and reasons for disengagement by these people. While poverty is a major problem for people in remote communities and has serious long term effects, it does not follow that remote Indigenous people will necessarily respond to the threat of financial penalties by complying with program requirements. The practice of sharing food and cash within family and/or kinship networks may shield individuals from the full effects of financial penalties. In this case, while an individual may not experience the full impact of loss of income the effect will be felt across their family, network or community. In some areas traditional or informal economic activity may be used to supplement or substitute for income support – at least for a period. On the other side of the equation, the rewards from participation in labour market programs are not always clear in communities with limited job prospects. What limited evidence has been made available suggests that job seekers in this program are more likely to receive a serious penalty than to achieve a job that lasts for at least 13 weeks[22]. The value of participation may be questioned.

[22] For example, in the three months from 1 July 2015 to 30 September 2015, according to figures tabled in Senate Estimates, 681 thirteen week outcomes were achieved but on average over a thousand serious penalties (8 week) were applied in each of the four preceding quarters.

Those who are eligible, but are not participating in the income support system tend to get over looked by policy makers when considering the design and effectiveness of labour market programs. But if it is true that they are present in large numbers in remote areas, that they are often young men, and that their numbers are increasing, then this could be expected to have long term effects – for example in increasing rates of crime, hunger, itinerancy and long term disengagement from the workforce.

Implications of 1 July 2015 changes

From 1 July 2015 RJCP was substantially changed and re-titled the 'Community Development Programme' (CDP). From this date, activity tested income support recipients aged 18-49 have been expected to participate in 25 hours of Work for the Dole activities, spread over 5 days per week, 12 months per year. For most, this has meant an increase both in number of hours worked each week and the number of days of attendance, on top of what were already more onerous mutual obligation requirements than those applying in other parts of the country.

These changes to requirements were accompanied by a substantial shift in contracting arrangements with providers. Provider payments have been directly linked to recorded hours of attendance in Work for the Dole[23]. Where clients fail to attend without a reasonable excuse, a provider will only retain their payment for that period where they report non-compliance to DHS *and* are able to re-engage the person in Work for the Dole within two weeks. While providers have retained some discretion to 'allow' absences or to identify people as not able to participate in Work for the Dole (eg because of mental illness or other health issues), in each case this will lead to reduced fees. Referral to other services – like rehabilitation or counselling – is allowed, but, if provider payments are to be maintained, must be monitored daily and must meet the hours requirement– something that is likely to be difficult in areas with limited community services.

Alongside these new payment arrangements, a new Programme Management Framework has been put in place which includes, as one of its Performance Targets that:

> All Eligible Job Seeker non-attendance is handled swiftly and appropriately in accordance with Guidelines and the Funding Agreement. This includes:
>
> • 100% of Eligible Job Seeker non-attendance is followed-up with the Eligible Job Seeker and actioned in the IT system on the same day.
>
> • If no Valid Reason or Reasonable Excuse for Eligible Job Seeker non-attendance exists, 100% of Provider Attendance Reports and Non-Attendance Reports are submitted to DHS within 2 business days of non-attendance by Eligible Job Seeker …(PM&C, 2015b)

While the rules still suggest that providers can choose strategies other than compliance to re-engage job seekers, both their performance ratings and financial outcomes will be reduced as a result (PM&C 2015b, PM&C 2015c).

Cumulatively, these changes have increased further the 'opportunities' for people to fail to comply, increased pressure on providers to report non-attendance, and increased the disparity between the requirements of job seekers in remote areas and job seekers elsewhere. As the new CDP rules are implemented there will almost certainly be more, substantial increases in financial penalties applied in what are some of the poorest communities in the country.

[23] There was an initial transition period up to 31st December 2015 through which providers were guaranteed income based on a 75% Work for the Dole attendance rate.

One other development must be noted here. On the 2nd of December 2015, the Minister for Indigenous Affairs tabled a bill in the Senate that would – if passed - enable him to remove a remote area from the those provisions of social security legislation that set out obligations, penalties and protections for job seekers and to create new rules (set out in regulations) in their place[24]. The proposed legislation would also enable the Government to move some of the decisions currently made by DHS in relation to income support payments across to CDP providers. Analysis of the intent and likely impact of that Bill is beyond the scope of this paper.

Conclusion

The legislative framework under which income support is administered in remote Australia is (at least for now) the same as that across the country, but available data from the first two years of RJCP suggests that the outcomes for beneficiaries have been quite different. More onerous program requirements – particularly in relation to mandatory 'Work for the Dole' type activities – have generated significantly higher levels of smaller penalties, and these in turn have contributed to higher application of 8 week penalties for persistent non-compliance. The systems that should protect vulnerable people from unreasonable requirements rely on the adequacy of DHS assessments and on the availability of services in remote locations to identify and document individual capacity limitations. The lack of these services means that at each stage of the process: from the setting of requirements, to assessment of vulnerabilities, to investigation of reasons for non-compliance, RJCP clients seem to be at a disadvantage. In some cases, people are leaving the income support system altogether, placing them beyond reach of employment assistance and increasing financial pressure on families and communities. As the compliance effects of the new CDP start to emerge, the question arises as to whether an appropriate balance has been struck between the employment opportunities and assistance afforded remote unemployed people and the effects of financial penalties on them and their families.

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Implementing the RJCP Research Project

The Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) is undertaking a research project on the implementation of the Remote Jobs and Communities Program (now Community Development Programme) in partnership with Jobs Australia. This project has been funded by the Australian Research Council and Jobs Australia, starting in 2013 and continuing for up to four years (Linkage Project No130100226). The research aims to document the way that RJCP is implemented over its first few years. It includes interviews with and surveys of providers, interviews with clients and other stakeholders, and observations.

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