Proposed Social Security Legislation Amendment (Community Development Program) Bill 2015

Briefing by Lisa Fowkes for Jobs Australia
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In brief

The proposed legislation would enable the Minister for Indigenous Affairs to determine the social security rules that would apply to activity tested income support recipients in specific ‘declared’ remote areas. Payment rates would be the same (although the legislation would allow for more generous tapering of benefits), and basic eligibility rules (like means tests) would be the same. But the activity test and penalties would be determined by the Minister through regulation/s. In addition, CDP providers could be made responsible for administering payments.

Currently there are around 37,000 people in the CDP, of whom 84% are Indigenous. There are around 40 organisations involved in the program, around half are Indigenous. The Minister has suggested that 4 regions would be initially chosen to test new arrangements.

Process

- Tabled on 2 December 2015 in Senate by Minister Scullion
- Referred to Senate Finance and Public Administration Legislation Committee for inquiry and report by 29 February 2016. Submissions close 29 January 2016. (list of members attached)
- Legislation would take effect on 1 July 2016

Justifications

The major justifications offered in the Explanatory Memorandum and Second Reading Speech include:

- The need to have stronger incentives for people to leave welfare
- The need to reduce complexity of rules so that remote beneficiaries can understand them better
- The lack of impact of existing No Show No Pay penalties because (it is argued) of the time delay between imposition of the penalty and the triggering event
- The lack of capacity for the current framework to support movement between income support and intermittent work.

The Explanatory Memorandum also states that:

> The unique circumstances facing job seekers in remote Australia means that tailored arrangements are required in order to improve outcomes and ‘normalise’ the concept of work within these communities. (Explanatory Memorandum)

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 is noted that, despite this, attendance is low. The implication is that by applying penalties sooner after a ‘no show’ and making the rules simpler, this rate of penalties will be reduced.

The Explanatory Memorandum summarises the Bill as follows:

> In summary, building on the existing CDP Programme, the Bill makes provision for:
(a) Payments made by the local CDP Provider on the ground who has a direct relationship with the job seeker;

(b) Payments made weekly to assist individuals to better manage their finances;

(c) A simplified compliance framework, with immediate No Show No Pay penalties to promote work-like behaviours;

(d) Provision for reasonable excuses for being absent, factoring in appropriate reasons such as illness and cultural business;

(e) Increasing income thresholds so individuals have a greater incentive to take-up casual or part time work, with the amount of income support dependant on participation in CDP activities; and

(f) The scheme to be phased in, on a region by region basis, to ensure provider capability and community willingness.

It is important to note that most of these specific provisions are not in the Bill itself but would, presumably, be in regulations that the Minister might make under the legislation if passed. The major effect of the Bill would be to empower the Minister to make new rules without reference to Parliament.

How the proposed legislation would work

The Bill would create a new category of remote income support recipients which includes all recipients of Newstart, Youth Allowance, Parenting Payments, Disability Support Pension and Special Benefits who (i) have participation requirements and (ii) whose ‘usual place of residence’ is in a ‘declared remote income support region’. The power to declare a ‘declared remote income support region’ would sit with the Minister for Indigenous Affairs. He has indicated that 4 regions would be chosen initially.

The Bill would remove all of income support recipients in these regions from the application of those parts of Social Security legislation that spell out participation requirements (eg – for Newstart this would be the activity test).

The Bill would also exclude these remote income support recipients from Division 3, Part 3A of the Social Security Administration Act – which spells out how non-compliance is to be dealt with. For example s42NA of that Act currently provides that, before DHS determines that a ‘serious failure’ (attracting an 8 week penalty) is applied, a Comprehensive Compliance Assessment (‘CCA’) must be conducted which examines the reasons for the person’s non-compliance, the appropriateness of their requirements, and any barriers that they may have to employment.

1 Those with participation requirements are, currently, people on Newstart, Youth Allowance (Other), Parenting Payment recipients with a youngest child of 6 or older, DSP under 35 with compulsory requirements, Special Benefit recipients subject to an Activity Test. Refer ExMem p7.
In place of these rules, the proposed legislation would give the Minister wide scope to determine the operation of social security rules in declared regions, including obligations, penalties, ‘reasonable excuse’ and functions of CDP providers in relation to the scheme. There is no requirement for consultation about the proposed arrangements, no minimum set of standards nor is there any ‘net benefit’ assessment.

The Minister has given some indication of rules that he would implement in his Second Reading speech and Explanatory Memorandum. One of these is a shift towards weekly payments, which may be welcomed by many in remote communities. However there is already provision for providing weekly payments in the Social Security (Administration) Act 1999 (s43).

A second issue is more immediate application of penalties following a non-attendance at an activity. This issue is already addressed in the Social Security Amendment (Further Strengthening Job Seeker Compliance) Bill 2015, which is currently before the Parliament. ACOSS has opposed this Bill, but suggested that a wider inquiry into the job seeker compliance system be held.

**Contracting out of payments to remote income support recipients**

The Bill would enable the Government to contract organisations to make remote income support payments. The Explanatory Memorandum explains that providers would be responsible for all payments for included beneficiaries, including rent assistance, remote area allowance and the Participation Supplement. Applications for payments would still be assessed by DHS.

This Bill sits against a backdrop of a new CDP Funding Deed and Performance Framework that directly link fees and KPIs (hence the ability to retain the contract) to participation in Work for the Dole and application of sanctions for non-compliance.

For example, service fees will only be paid for Work for the Dole eligible participants where they actually attend Wfd, where they have a reasonable excuse or where the provider takes compliance action and the job seeker re-engages within 2 weeks. Regardless of their preferred engagement strategies, providers now must report non-compliance or risk going out of business.

A direct conflict of interest would arise between the CDP providers’ financial interest in compliance and the traditional obligations of those that administer welfare payments to ensure that people have access to the income support safety net.

**Review of decisions**

The Bill would amend the Social Security Administration Act so that decisions of CDP providers under a remote income support regime are treated in the same way as those of DHS officers. That means that they would initially subject to internal review, in this case by the Department of Prime Minister and Cabinet. The form of any review process, or the qualifications of people that might be involved is not specified. An internal review conducted by PM&C would be able to be reviewed by the AAT.
Taper rates (income free areas)

The legislation introduces generous new income support taper rates (or income free areas) that would enable remote income support recipients to earn up to the minimum wage before their income support is withdrawn. However, the benefits of these new arrangements would be limited by the operation of the CDP Work for the Dole arrangements.

Under the current CDP Guidelines (effective 1 July 2015), people with full-time work capacity between 18-49 years, and who are on full payment, are required to work 25 hours per week, 5 days per week. But any paid work they do can be counted towards these hours. And, where this additional income causes them to move to a part payment, they can no longer be forced to Work for the Dole.

Under the new rules, if a job seeker does paid work instead of Work for the Dole on a particular day, then they will lose income support for the time missed. A job seeker must work hours over and above the 25 hours per week Work for the Dole in order to benefit from the more favourable taper rates. For example if a job seeker works 2 days for pay and 3 days on Work for the Dole, at 5 hours per day, they will be worse off under the new arrangements.

In addition, the availability of 30,000 people working 25 hours per week Work for the Dole is likely to reduce the need for local employers to hire paid labour.

Community investment fund

The Minister has promised ‘a new community investment fund will be established to enable funds that have been withheld as a result of compliance penalties to be put back into communities to assist local economic and community development initiatives and programs’.

The fund would be administered through the IAS. There is no reference to this in the Bill itself.

Key issues

This legislation would give the Minister for Indigenous Affairs wide ranging powers over the social security rules that apply in remote areas, subject only to the ability of Parliament to disallow regulations. The checks and balances in social security legislation are hard fought, and the Parliament has been extremely active in scrutinising Government actions in this area. This legislation would dramatically reduce the role of Parliament in making or reviewing rules in remote areas, without providing any alternative governance structure that might give local people a say.

One justification for different arrangements is the high rate of penalties being applied to CDP recipients for not attending activities. The argument is that this is because of complexity and lack of timeliness of penalties. However, the most recent – very worrying – increase in CDP penalties arises not from these rules, but from the imposition of more onerous WfD requirements and the linking of provider payments to reporting breaches. There is an urgent need to address the rise and rise of penalties being applied to remote job seekers, but the proposed Bill would not address this.
Some providers will support the proposal that they take over administration of income support payments. This reflects frustration when providers tell clients that they will be penalised for non-attendance, and then DHS does not apply the penalty. Providers have little confidence in DHS officers, citing their acceptance of excuses that seem unreasonable and their lack of knowledge of specific communities. It is clear that the job seeker compliance framework is not working as well as it should be in remote communities. The remoteness of DHS from these locations is a major problem. Many many client assessments are done by phone or file review – which means that major job seeker issues are not recognised by DHS and inappropriate levels of activity are required. Decisions on more minor penalties are made by people with little local knowledge, and communication with providers is poor. The compliance process is seen as bureaucratic. Many compliance reports are rejected because they don’t meet formal requirements (eg no record of notice being given to job seekers, overlapping obligations in EPPs). But these formal requirements arise because this is a safety net – they are unlikely to be resolved by simply giving providers control. Rather than reducing red tape for providers, giving control over payments to them will make it even more critical that they follow detailed procedures and document their decisions.

The Minister frequently refers to the former CDEP program in describing his intentions with this legislation and the CDP more broadly. Some see CDP as a return to CDEP. But there are key differences between what is proposed and CDEP:

- 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. It was a voluntary program, offering opportunities to earn wages and be considered an employee, to contribute to community projects, and to avoid engagement with Centrelink.

- CDEP wages were based on minimum award wages, so 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. The 25 hour WfD requirement means that CDP participants would work for less than the minimum wage and the new taper arrangements would, ironically, make this worse.

- For most of its history CDEP was managed by local Indigenous organisations. These organisations were given considerable discretion in the payment rules that they applied and the arrangements that they made for CDEP activities. Under the proposed arrangements there is no requirement that any organisation that would be managing income support have a local governance structure of any sort. About half of current CDP providers have their head offices outside the service region/s and about half of regions are serviced by for profit providers. In any case, the rules relating to the CDP program give providers very little discretion over when to report non-attendance at activities or over how they arrange activities (for example there are strict rules around 5 days per week, and limits on things like bereavement leave). There is no sign that Government would relax its micro management of the rules around payment.
What could be done?

If the Minister wishes to revive a form of CDEP then it could be done and would not necessarily require legislation. A scheme could be established that provides welfare payment equivalent to local community based organisations to create part time work, at award rates, for anyone who is unemployed and willing and able to participate. Incentives could be built in to encourage people to move on to other employment if and when it became available. But there would still be a group who would need access to the social security safety net, at least some of the time. (Note that CDP caseload includes many people who would never have been required to participate in Job Network (or CDEP) because of their disabilities, mental or physical health issues or personal circumstances.)

When an independent review of the job seeker compliance framework was conducted in 2010, the Review 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.

No review was conducted, and the problems of failure to assess individual capacity, lower rates of exemptions, and lack of confidence of providers in DHS assessments remain. We are now at a point where more people have received serious penalties (ie 8 week penalties) than have achieved 13 week outcomes through the program. Rather than move providers to deliver more of the social security system, it would be better to strengthen DHS’s capacity in remote areas (both by increase on ground presence and stronger connections with providers) and enable providers to spend more time on employment preparation, placement and creation.