



Australian Government



**Community
Development
Programme**

Consultation Paper

Changes to the Community Development Programme

Submissions will be accepted from 8 March to 20 April 2016.

Consultation Paper

Changes to the Community Development Programme

Overview

On 2 December 2015, the Government introduced the *Social Security Legislation Amendment (Community Development Program) Bill 2015* (the CDP Bill) into the Parliament. The CDP Bill establishes a more direct and immediate income support payment and compliance regime and stronger incentives to work for remote job seekers.

The CDP Bill builds on the current Community Development Programme (CDP), introduced on 1 July 2015. The CDP aims to assist people to gain the skills, experience and commitment necessary to find paid work where it exists, and in the absence of work enables people to participate in continuous CDP activities intended to benefit both individuals themselves and their community.

Although steady progress has been made in the first six months of the CDP to reduce welfare dependency in remote communities, current incentives need to be stronger to encourage people to be active in their communities and to take up opportunities to work.

To address this, the CDP Bill creates a framework for new and simpler income support payments and compliance arrangements for individuals living in remote Australia who are eligible for activity tested income support payments. It also provides additional incentives to work by increasing the amount an individual can earn before their income support payment starts to reduce under the income test.

In summary, building on the existing CDP, the legislation makes provision for:

- Payments to be made by local CDP providers;
- Payments to be made weekly to assist individuals to better manage their finances;
- A simplified, compliance framework, with immediate non-attendance penalties to promote work-like behaviours;
- Provision for reasonable excuses for being absent, factoring in appropriate reasons such as illness and cultural business;
- Increased 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
- The scheme to be phased in, on a region by region basis, to ensure provider capability and community willingness.

The proposed new income support payment and compliance arrangements, as well as the increased income thresholds will be introduced using a phased approach, commencing from 1 July 2016. The initial rollout will include up to four of the 60 CDP regions.

How are we consulting on the new arrangements?

The CDP Bill establishes a basic legislative framework to set up these new arrangements.

By itself, the Bill does not trigger the introduction of the new arrangements. Nor does it set out the detail for how these arrangements will work. Instead, the Bill is underpinned by two important legislative instruments.

1. The first will set out in detail changes to rights, responsibilities and obligations that a remote job seeker must meet while in receipt of income support.
2. The second will enable the Minister to determine which regions will commence under the new arrangements.

Both instruments must be consulted on, and feedback must be sought from affected parties, before the legislative instruments are introduced into the Parliament. Both legislative instruments are disallowable by the Parliament.

What this means is that the new arrangements will be subject to Parliamentary scrutiny – they are unable to be introduced without agreement of the Parliament. Further, the new arrangements cannot be introduced into a region until the Government has consulted with affected parties, and is confident that the CDP provider and the community are ready to commence.

Inclusion of the details of the new arrangements in legislative instruments rather than in the Bill itself also means that the Government is able to respond quickly to feedback from the communities during the implementation phase.

This consultation paper will inform the development of the first legislative instrument. It provides detail on the proposed penalties scheme and compliance framework that will be determined via the legislative instrument.

Key Dates

- ✓ Consultation on the arrangements set out in this paper will occur between March and May 2016, building on the consultation throughout 2015
- ✓ PM&C will conduct a series of targeted consultations around the country with communities and CDP providers during March & April 2016
- ✓ A CDP Provider meeting will be held in May 2016 to discuss the reforms and listen to provider feedback
- ✓ A web-based platform will be established with information and case studies and an opportunity for comments and submissions to be provided by 20 April 2016
- ✓ An exposure draft of the Legislative Instruments will be released in mid-May

Following this consultation process, PM&C will develop final legislative instruments, incorporating community and provider feedback, for consideration by the Parliament.

Feedback is welcome on all areas of the paper. We have included some prompt questions below and throughout the paper that you may choose to comment on. We want to ensure that all relevant stakeholders have an opportunity to comment on these proposed new arrangements. We are also interested in hearing any feedback on matters that have not been addressed in this paper, but which you think are important.

The closing date for comments is 20 April 2016. Submissions will be made public unless specifically requested otherwise.

Information on how to make a submission is provided at the end of this paper and is also available on the Department of the Prime Minister and Cabinet (PM&C) website.

Questions to consider when making a submission:

- ✓ What elements of the current national Job Seeker Compliance Framework don't work well for remote job seekers? How could these be improved?
- ✓ Do the proposed new arrangements balance the need to provide safeguards for job seekers with the objective of having individuals attend activities and take-up work?
- ✓ Are the proposed new arrangements simple and easy to understand for job seekers?
- ✓ Will the proposed new arrangements create perverse incentives or lead to unintended consequences?

How will the first regions be selected?

No decision has yet been made about which regions will be part of the first phase of implementation. A number of regions have expressed strong interest in being part of the first phase.

Under the Bill, when determining the regions in which the reforms will operate, the Minister must consider:

- whether the region is remote;
- the level of social and economic disadvantage within the region, including levels of unemployment, social welfare and education;
- the capability of the region's CDP provider to provide income support payments; and
- other relevant matters.

What this means is that the new arrangements will be introduced into regions where the community is willing, ready and in need of the reforms due to their levels of social and economic disadvantage.

There will also necessarily be minimum standards of capability that the local CDP provider must meet before the reforms will be phased in.

This includes the capabilities to make payments to job seekers on time, make robust decisions supported by strong governance arrangements, and appropriately engage with the community

they service. CDP providers will be consulted in the development of supporting systems and processes.

Over the coming months we will speak individually with providers who are interested in commencing in the first phase of implementation about their readiness to adopt the new arrangements. Where there is strong provider readiness, consultations will be held with leaders and communities to assess their willingness.

Current compliance arrangements - what is the status quo?

All job seekers who receive activity tested income support payments have mutual obligations – that is, activities they agree to participate in or undertake, in return for their income support. The rules around what penalties apply when a job seeker fails to attend these activities is set out in the Job Seeker Compliance Framework. The Job Seeker Compliance Framework is currently applied nationally to all job seekers.

At present, providers are responsible for advising the Department of Human Services (DHS) when a job seeker does not attend a mutual obligation activity and does not have a reasonable excuse.

DHS then consider the provider's advice and decides whether or not a penalty can or should be applied. If a penalty is applied it cannot be deducted from a jobseeker's income support payment until two fortnights after non-attendance.

In practice, in remote areas this process can take five or more weeks creating long delays between the jobseeker's action (for example, failure to attend an activity, appointment or job interview) and the penalty.

The Job Seeker Compliance Framework is also very complex. It provides for a wide range of financial penalties and suspensions with backpay of varying lengths, mandatory re-engagement appointments with providers and scope for additional activities to make up for non-attendance. It is often difficult for job seekers to understand their rights and obligations and to understand the impact of compliance on their income support payments.

Proposed model: simple, easy to understand and immediate

We are proposing that in remote Australia, the Job Seeker Compliance Framework would be replaced by much simpler rules that are more immediate and easier for the job seeker and CDP provider to understand.

One penalty for not attending an activity

Instead of a wide range of penalties and suspensions, we are proposing that there only be one, immediate penalty for failures to attend a mutual obligation activity that the job seeker has agreed to participate in.

This penalty would be called a *No Show* penalty. The penalty would be calculated based on hourly attendance and would be reflected immediately in a job seeker's weekly income support payment.

- Currently penalties are deducted on a daily basis. This means that if a job seeker only turns up for part of a day, they lose a full day's income support. Hourly penalties are fairer as they will better reflect actual attendance.

No Show penalties would be applied by the CDP provider and would be deducted for each hour a job seeker fails to attend or participate in their required mutual obligation activities - such as a CDP activity, appointment with the provider, counselling session, searching and applying for jobs, or job interview.

Hourly penalties will make it easier for job seekers to understand when and why they have been penalised. They will also allow providers greater flexibility to schedule activities for a job seeker across a single day and to work around job seekers' home and employment routine. This also provides greater equity for job seekers and the community.

Currently, CDP providers have discretion when a job seeker fails to turn up to an activity, to not advise DHS that a penalty should be applied. Under the proposed arrangements, CDP providers would be required to apply a penalty when a job seeker does not attend an agreed activity unless the job seeker has a reasonable excuse for not attending or they have leave or an exemption from activities.

- We propose that, reflecting the existing system, a higher level of discretion would be provided for Disability Support Pension (DSP recipients). CDP Providers would retain the discretion to apply the penalty only where they believe it would encourage the DSP job seeker to understand their requirements and meet them in the future. This keeps an important current protection in the system for DSP recipients who are more vulnerable.

No Show penalties will be a strong and effective tool to change behaviour – provided they are able to be applied immediately, in the same week that an hour of activity is missed. Making the penalties mandatory (subject to the job seeker having a reasonable excuse or an exemption) will assist providers in communicating tough decisions to their caseload.

A simpler, fairer penalty rate

Currently, penalties for non-attendance are applied at a daily rate of 1/10th of a job seekers' basic fortnightly entitlement including some supplements.

Job seekers of full activity tested benefits can potentially lose all their income support if they don't turn up to any of their mutual obligation activities in a fortnight.

We are proposing that instead of a proportional penalty (for example a 1/50th hourly penalty), a flat hourly penalty be applied to a job seekers' basic entitlement. This penalty would be fixed at set rate for all jobseekers. For example, a penalty amount of \$7 or \$10 for every hour activity missed.

We are seeking your view on what an appropriate penalty would be – resolving this will be a key part of the consultations.

- ✓ Most job seekers are required to attend 5 hours a day of activities, meaning a weekly attendance of 25 hours. Under the proposed system, these job seekers would be penalised either \$7 or \$10 for every hour they did not attend.
- ✓ **This would be fairer. All job seekers would have the same amount deducted from their income support payment for missing an hour of activity regardless of the payment they are receiving.**
 - Currently, the proportional penalty rate means that job seekers on higher basic entitlements (for example DSP recipients and recipients of Parenting Payment) are penalised more per hour than those who receive lesser amounts of income support (such as Newstart Allowance).

A flat hourly penalty would make the penalty system easier for job seekers to understand and for CDP provider to communicate.

It would create a stronger incentive for some job seekers to attend activities than current arrangements. Newstart Allowance and Youth Allowance recipients who have full activity tested requirements (25 hours a week), will have the strongest incentive to attend activities as they could (consistent with the current system) lose the vast majority of their income support if they fail to attend the full week of activities. It is important to retain this element of the current system as this group of job seekers is generally the most disengaged and also the most capable of participating.

At the same time however, a flat penalty rate would mean that for the most vulnerable job seekers – single parents and disabled people – the penalty would be a smaller proportion of their overall payment. These job seekers would always retain a portion of their income support payment, even if full penalties are applied.

A safety net for persistent non-compliance

When a job seeker persistently fails to show up to their activities, or shows up irregularly, it is important that there is an investigation and report of the reason.

- Establishing a set review point when a job seeker persistently failing to show up is an important safeguard to ensure that job seekers do not end up in a downward cycle of non-compliance – with their income support eroded by No Show penalties every week.

There are many reasons for non-attendance. In many cases, the activity may not suit or interest the job seeker. Where this is the case, a review by the CDP provider would often result in a provider renegotiating the type of activities, or the timing and location of activities with job seekers so that they better suit the job seeker's needs.

Alternatively, the job seeker's circumstances may have changed, and a re-assessment by DHS of their capacity to attend activities or their hourly attendance requirements, might be needed. Views are sought on what resources would be needed to support the job seekers, such as social work or case management/wrap around services.

However, where persistent non-attendance is not able to be addressed in these ways, the CDP provider will require additional compliance tools to encourage the job seeker to re-engage.

Currently under the national Job Seeker Compliance Framework, a review is triggered when, in a six-month period, either three failures for non-attendance at appointments, not entering into Job Plan and unsatisfactory Job Search are applied; or when three No Show No Pay failures are applied; or at any other time if a provider believes a job seeker's circumstances warrant it (for example, if the job seeker is continually failing to comply with their requirements for no apparent reason).

We are proposing that instead, where a job seeker attends less than 25 per cent of their required hours of mutual obligations over a 10 business day period (and the provider is aware that they are not missing their activities because they are working), a Compliance Review is triggered.

Compliance Reviews would be a comprehensive review of the job seeker's individual circumstances including considering the causes for their persistent non-attendance, whether their activities are suitable and any other relevant matters.

Compliance Reviews would be on top of any informal reviews or discussions with the job seeker that the provider could decide to conduct at any time to increase attendance.

The initial Compliance Review would be conducted by the provider, by a different case manager or review officer. During the review period, the job seeker could continue to incur No Show penalties.

If multiple Compliance Reviews were triggered within a 12 month period, the first and second reviews would be conducted by the provider and any subsequent reviews would be conducted by the Australian Government.

What would be the outcomes of a Compliance Review?

The outcomes of the Compliance Review could include a combination of the following:

- revision of the job seeker's activities or supports;
- conducting an assessment of the job seekers capacity, circumstances and/or required hours;
- waiver of No Show penalties if a determination is made by the provider in agreement with the Australian Government that that the job seeker is in undue financial hardship;

OR

- the application of a Persistent Non-Attendance (PNA) penalty and potentially cancellation (further detail provided below). *This compliance tool would only be available where a jobseeker is attending less than 10 per cent of their required hours in a month period.*

Persistent Non-Attendance penalty

Where a job seeker attends less than 10 per cent of their required hours of mutual obligations over a 20 business day period, we are proposing that a Persistent Non-Attendance (PNA) penalty could be applied following a comprehensive Compliance Review if a determination is made by the CDP provider that the job seeker is entirely disengaged despite well-tailored activities. This preserves the current protections, but tailors them to remote circumstances.

The penalty would be equivalent to non-payment of 20 business days of the job seeker's entire income support payment (including any supplements or income managed components).

During the penalty period, the job seeker would not have any compellable activities (as there would be no payment left to apply No Show penalties to). However, at any point during the penalty period the job seeker can contact the CDP provider and request that they immediately start attending their activities again. In this case, we are proposing that the remainder of the penalty would be waived and payment of the job seeker's income support would recommence.

The PNA penalty is designed to mimic the effect of current cancellation arrangements. Its purpose is to encourage the job seeker to re-engage with their provider. Unlike current cancellations, however, it gives the job seeker the chance to immediately return to full income support at any time, if they start attending activities.

Cancellation

Cancellation of income support is designed to prevent the ongoing burden for providers and government of job seekers who cannot be legally compelled to attend activities (as they have not agreed to mutual obligation requirements) or are entirely and persistently disengaged with their activities.

The current system provides for cancellation of a job seeker's income support if the job seeker fails to make contact for 28 days following a missed appointment or where they fail to agree their Job Plan.

Similar to the current arrangements, we are proposing that, under the new arrangements, a CDP provider would be required to refer job seekers to the Australian Government for cancellation of their income support where either:

- a job seeker when they commence with the CDP fails to agree their mutual obligation activities within 10 business days (this is consistent with current arrangements where a job seeker fails to agree their Job Plan); or
- a job seeker has incurred a PNA penalty following a Compliance Review and received the full penalty by failing to attend for another 20 business days (i.e. over 40 days of non-attendance). This is fairer than current arrangements as it gives jobseekers twice as long to re-engage with their CDP provider before cancellation, reflecting the specific challenges of re-engaging job seekers in a remote environment.

PM&C would review the job seeker's circumstances and could decide a job seeker's income support should be cancelled. Alternatively, PM&C could refer the job seeker back to the provider with a recommended approach for re-engaging the job seeker.

If cancelled, consistent with the current system, to be eligible for future income support, the job seeker would have to re-claim income support with DHS.

Are the new penalty arrangements tougher on job seekers?

The overarching guiding principle we have applied in designing the new compliance framework is that smaller penalties that are simple to understand and are applied immediately and locally, will drive better jobseeker behaviour.

The guiding principle when developing the proposed arrangements was that there would be no increase the types of non-compliance or in the size or duration of current penalties.

The box below compares the current and proposed system in more detail.

Comparison of current and reformed compliance approaches

- ✓ The proposed approach ensures that all existing safeguards for job seekers are replicated:
 - penalties for Disability Support Pension recipients are discretionary;
 - comprehensive, independent reviews to address persistent non-compliance that are automatically triggered;
 - penalties waived if the job seeker re-engages in activities; and
 - penalties waived if applying the penalty would place the job seeker in undue financial hardship.
- ✓ The period before a disengaged job seeker is cancelled would be doubled to two months where currently it is one month.
- ✓ Penalties are more responsive. While the application of No Show penalties would become mandatory rather than discretionary, they would be applied per hour rather than per day giving job seekers the opportunity to re-engage faster and reduce the impact on their income support.
- ✓ The maximum penalty length would be 4 weeks for job seekers who are attending less than 10 per cent of their required hours. Currently an 8 week penalty can be applied for missing activities on 3 occasions and the highest penalty is a 12 week penalty which can be applied for a job seeker who loses suitable work.
- ✓ A simpler framework:
 - It removes the complex system of suspensions and re-engagement appointments which are confusing and can result in additional financial penalties for job seekers; and
 - Instead of having different penalty arrangements for failing to attend provider appointments and other appointments or activities, No Show penalties would apply for non-attendance at any mutual obligation requirement.

Redirecting penalties into communities

Currently, when a penalty is applied to a job seeker's income support, that penalty is returned to the Federal Budget.

We are proposing instead, that under the new arrangements, a new Community Investment Fund be established so that funds that have been withheld from job seekers as a result of penalties are put back into communities to assist local economic and community development initiatives and programmes.

The Minister for Indigenous Affairs will be the responsible delegate for the Fund as an accountability measure.

The accountability mechanisms for the Community Investment Fund would be consistent with usual Government process for the expenditure of Government money and will ensure proper scrutiny of Commonwealth funding. We are proposing that funding would be directly hypothecated to address job seeker needs and investment into communities in CDP regions.

We have started discussions with CDP providers and some communities about what would be the most effective way to ensure funds deliver on the ground outcomes for job seekers. Some stakeholders are of the view that Community Investment Funds should be redirected back to the provider, to spend on job seekers or community projects. Others are concerned that this would create an increased incentive for providers to apply penalties and a reduced incentive to encourage job seeker attendance.

We are seeking your views on what you think would be the best approach.

Reasonable excuses & exemptions sit with the provider

Under current arrangements job seekers may avoid penalties for non-attendance if, having missed an activity, they have a 'reasonable excuse' for not attending.

Currently in social security law the meaning of the term reasonable excuse is discretionary and based on the excuse being considered one that an ordinary member of the community/employer would accept as reasonable for an employee who missed work. It might include for example, sickness or unexpected caring responsibilities.

Providers currently are responsible for assessing whether a job seeker has a reasonable excuse and advising DHS. In making a determination on reasonable excuse, the provider is required to establish whether:

- the circumstance preventing a job seeker from meeting their requirements is unforeseeable or outside their control;
- the requirement or activity was within their capacity and appropriate; and
- they were clearly notified of the requirement in a way suitable to them.

In addition, DHS may grant the job seeker an exemption from their requirements for a specified period – up to 13 weeks or longer depending on the circumstances. The job seeker is suspended from a provider’s caseload for the duration of the exemption, unless they volunteer to continue in CDP activities.

In practice, exemptions fall into three categories:

- Medical and illness related – long term medical or illness related absences with a medical certificate. Providers are expected to manage short term medical/illness related absences (1-2 days).
- Family exemptions – including for family deaths, relationship breakdown or domestic violence. Principal carer parents and parents of disabled children can apply for rolling exemptions for up to 12 months.
- Personal circumstances – unforeseen or unavoidable, including natural disaster, homelessness, Indigenous cultural business, pregnancy and parental leave.

We are proposing to retain the current definition of reasonable excuse and the current categories of exemption, but are seeking your views on whether they are appropriate and adequate.

We are also proposing that responsibility for assessing and granting requests for exemptions and reasonable excuse transfer from DHS to CDP providers. This would mean providers are responsible for determining exemptions, reasonable excuses, and valid reasons.

What should be a mutual obligation activity?

Currently, most people receiving income support payments with mutual obligation requirements must show that they are actively looking for work and are participating in a range of activities that will help them into employment, unless DHS has granted the job seeker an exemption from these requirements.

The number of hours an individual can be required to do will vary depending on their assessed capacity to work following an Employment Services Assessment (ESAt) or whether they are a Principal Carer Parent.

Mutual obligations include the range of requirements a job seeker can be compelled to fulfil under social security law in return for activity-tested income support. These include:

- attending provider appointments – currently mandated at monthly;
- Job Search;
- acting on referrals to jobs;
- participating in Work for the Dole;
- undertaking employment (part time or full time); and
- participating in any other activity that is relevant to their personal circumstances and that will help the job seeker improve their employment prospects.

The current system provides significant flexibility for providers to select the most appropriate mutual obligation activities for each job seeker. This allows local-decision making to tailor mutual obligation requirements to the remote context.

We are proposing that current arrangements be retained, but are seeking your views on opportunities to broaden the scope of mutual obligations to ensure that all activities that contribute to community development and wellbeing are sufficiently captured.

How would the review and appeals process change?

Currently, if a job seeker does not agree with a decision made by DHS in relation to the job seeker's income support payment (including qualification, pay ability, rate of payment, participation requirements, and compliance decisions), the job seeker can request DHS internally review the decision.

There are two levels of internal review. Initially the original DHS decision-maker reviews their decision. This stage is classified as an informal 'original decision maker' review and is not a formal merits review process under Part 4 of the *Social Security (Administration) Act 1999* (*SS (Admin) Act*).

If the officer does not revise their original decision, the matter is formally referred to a DHS review officer to conduct a more detailed review of the decision under Part 4 of the *SS (Admin) Act*.

If the job seeker does not agree with the decision made by the DHS review officer, the job seeker can seek review of that decision by the Administrative Appeals Tribunal (AAT), as provided for in Part 4A of the *SS (Admin) Act*. DHS advocates (lawyers) usually appear for the Secretary in this review process before the AAT.

If the job seeker does not agree with the outcome of the AAT review, they may seek AAT second review. An AAT second review can be appealed to the courts on a question of law.

We are proposing that the current review and appeal process would continue unchanged for all decisions that are made by DHS. This includes qualification, payability, income test and rate of payment decisions made by DHS for remote job seekers.

An equivalent review and appeal process would be introduced for all decisions made by CDP providers in relation to remote job seekers (including reasonable excuses, exemptions, and penalty decisions).

In the first instance, we propose that a job seeker would be able to ask the CDP provider to review their original decision. As with the current process, this would not be a formal merits review process under Part 4 of the *SS (Admin) Act*.

If the CDP provider does not revise their decision, they would then refer the matter to a PM&C officer to conduct a formal review under Part 4 of the *SS (Admin) Act*. PM&C would have the power to require CDP providers to provide any information relevant to the review.

If the job seeker does not agree with the outcome of PM&C's review they may, consistent with current arrangements, seek a review of PM&C's decision by the AAT, as provided for in Part 4A of the *SS (Admin) Act*. As is currently the case with DHS decisions, the job seeker would not be able to appeal CDP provider decisions directly to the AAT. PM&C advocates (lawyers) would appear for the Secretary in this review process before the AAT, the provider would not be required to attend.

If the job seeker does not agree with the outcome of the AAT review, they may as per the current process, seek AAT second review and subsequently appeal to the courts on a question of law.

Making a Submission

Interested parties are invited to make a submission on the development of the legislative instruments supporting the Community Development Programme Bill. To obtain a copy of the CDP consultation paper - <http://www.dpmc.gov.au/indigenous-affairs/publication/consultation-paper-changes-community-development-program>

The Department welcomes your views on the questions; you do not have to answer every question.

Electronic lodgement of submissions is preferred and an online submission process has been created. You can complete an online submission at <http://www.dpmc.gov.au/forms/cdp-consultation>

Written submissions can also be made. A submission template has been developed and can be obtained at <http://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/indigenous-employment/cdp/consultation-changes>

If submitting your written submission by email, please ensure that your response is provided in Word or RTF format. Completed submission should be emailed to: CDPConsultation@pmc.gov.au

Should you wish to return your submission by post, written submissions should be sent to:

The First Assistant Secretary
Community and Economic Development Division
Department of the Prime Minister and Cabinet
1 National Circuit
Barton ACT 2600

If you have questions about how to complete a submission please email CDPConsultation@pmc.gov.au

Closing date for submissions

The closing date for submissions is **5:00pm EST Wednesday 20 April 2016.**

All submissions received will be published on the Department of the Prime Minister and Cabinet's website.

You can request your submission not be published. You need to advise us of this when lodging your submission.