

# Submission on the Social Security Amendment (Community Development Program) Bill 2018



September 2018

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## About NESA

NESA is dedicated to creating opportunities for all through employment. Our mission is to lead a sustainable, effective and diverse employment services sector through:

- ▶ influential representation and advocacy; and
- ▶ effective member support and capacity development.

NESA is the peak body for all of Australia's contracted employment services which provide labour market assistance to improve opportunities and outcomes for disadvantaged job seekers and employers. Our members include not-for-profit and for-profit organisations that have extensive coverage of jobactive, Disability Employment Services (DES), the Community Development Programme (CDP), and other complementary programmes such as Transition to Work (TTW).

NESA is committed to working with our members, communities and the government toward addressing the Closing the Gap targets. Our advocacy work has focused on industry led solutions for the employment services sector that will lead to increased employment of Aboriginal and Torres Strait Islander people across Australia.

NESA is also actively engaged in the delivery of direct project support to service providers working in remote Australia through our subsidiary NESA Solutions.

NESA is committed to the delivery of quality employment and participation services in remote Australia. NESA's membership for CDP Providers cover 60 percent of CDP regions nationally.

Our membership base includes a diverse range of organisations including Indigenous organisations, not-for-profit and for-profit organisations, organisations operating in single regions, and those operating across multiple regions. NESA members deliver services in every state in which CDP operates.

## Summary of Feedback - Supporting Successful Implementation of the Targeted Compliance Framework (TCF) in Remote Australia

Based on feedback contained within our submission NESA proposes the following recommendations for the successful implementation of the TCF:

- ▶ A greater lead-in time that allows a greater consultation process with remote providers and their relevant peak bodies, to work through a framework that is responsive to the conditions of remote Australia.
- ▶ Flexibility in service design which allows for remote communities' varied circumstances.
- ▶ Discretion for service providers and communities to determine what constitutes valid reasons for non-attendance.
- ▶ A detailed community engagement strategy that equips remote communities with the understanding that they require to engage under the new compliance framework conditions.
- ▶ Amendments to ensure that all job seekers placed in work benefit from arrangements which allow them to voluntarily leave work and have less involvement with the TCF, and the option for a payment cancellation rather than a waiver under the TCF.

## Background

NESA and its members are committed to the delivery of quality services that support and respond to the needs and opportunities of remote Australia. NESA notes that employment and participation services to remote communities have been a topic of discussion for many years and has featured in numerous reviews, inquiries, discussion papers and submissions. A focus on improving the compliance framework which operates in remote Australia is a critical component of these discussions. NESA understands that the Government are seeking to change the way in which compliance is monitored within remote Australia through extending the Targeted Compliance Framework (TCF) to regions where the Community Development Programme (CDP) operates.

The proposed legislation will “amend the Social Security Act and the Social Security Administration Act to support the reforms to the Community Development Programme (CDP) and introduce the Targeted Compliance Framework (TCF) to CDP regions, consistent with arrangements in the rest of Australia”.

Based on information currently available, NESA understands that:

- ▶ All job seekers in remote Australia would be subject to the TCF where they are in receipt of relevant income support payments.
- ▶ To receive benefits, job seekers will be required to meet all relevant mutual obligation requirements. Mutual obligation is currently set in accordance with capability, but for most job seekers is 25 hours per week, to reduce to 20 hours per week as part of proposed changes to the programme.
- ▶ The default activity for meeting mutual obligation in remote communities is and will remain CDP.
- ▶ Under the TCF, CDP providers would be tasked with monitoring compliance with mutual obligation as captured within a Job Plan.
- ▶ Under the current programme guidelines, job seekers are required to meet job search, monthly appointments and daily participation requirements. Any failure to meet these requirements would constitute a participation failure, requiring action under the TCF.
- ▶ At each failure, payment is suspended until a job seeker re-engages with their provider, at which point the job seeker is then back-paid.
- ▶ Where a participation failure occurs, a job seeker could accrue a demerit points, as determined by their service provider. Service providers will determine if a demerit is applied based on their assessment of the job seeker’s circumstances.
- ▶ After accruing three demerit points, a job seeker would undertake a capability interview with their service provider to identify any barriers or concerns.
- ▶ Subject to the outcome of that assessment, the job seeker would move to a warning zone. Following a further two demerit points, the job seeker will undertake an assessment with the Department of Human Services to determine the extent to which they can comply with their obligations.
- ▶ Subject to the outcome of this assessment, they may move into a financial penalty zone. Further participation failures will result in payment reductions, and ultimately payment cancellation.

The following provides NESA’s feedback on the legislation. Feedback provided in this represents NESA’s views only. In considering the legislation before the Senate, we have however engaged with our membership for their views on the proposed framework. We have also drawn on our experience as the peak body for Australian employment services to present views on the relevant merit and challenges of this legislation.

As part of our feedback, NESAs takes this opportunity to reiterate the following considerations:

- ▶ There is consensus that the unique and complex characteristics and circumstances of remote communities require tailored and specific responses
- ▶ Reflecting the diversity of circumstance of each community, there is a strong view that a one-size-fits-all model of employment and participation is not appropriate for remote communities
- ▶ Employment and participation services in remote Australia have been subject to consecutive waves of reform which have been particularly intense over the past decade.
- ▶ In this reform, there has been an absence of evidence-based remote services programme development, often resulting in sweeping change encompassing both effective and ineffective elements
- ▶ While intended to deliver improved opportunities for participation and employment, each wave of change has brought with it destabilising elements that undermine progress on achievement of objectives.

These considerations must not be overlooked in the consideration of implementing a new compliance framework in remote Australia.

## Application of the Targeted Compliance Framework in Remote Australia – Issues and Observations

The following details NESA's observations on the possible impact of the legislation before Parliament. In considering our feedback, we would note the necessity of recognising that a compliance framework does not operate independent of other policy levers in the programme design and the community. Issues such as mutual obligation and pace of change all work in concert to impact on delivery. It is therefore difficult to provide comprehensive feedback on a proposed new compliance model without consideration of these issues.

### The Rationale for Change

NESA notes that both the Budget Announcement and Explanatory Memorandum suggest that the introduction of the TCF in remote Australia is in response to a desire to see parity between remote and non-remote locations, as it relates to compliance.

NESA does not believe that the introduction of the TCF specifically responds to feedback provided as part of consultations or iterative policy discussions on compliance held in previous years. Our experience and feedback from our members and the communities that they service is that the request of parity is directly related to comparison of daily participation requirements across the different contracted employment programmes. CDP as it is currently structured requires daily participation of the majority of its job seekers, while other mainstream employment programmes have a monthly requirement. It is important that the term parity should not be unfairly referenced as a justification for the introduction of a national compliance framework.

NESA and its members have however advocated that the current compliance arrangements, in concert with payment and other programme mechanisms have not worked to support the Government's objectives of supporting people into work and supporting them to participate to their maximum capacity. As such, we do support the Government's objective to look at alternative compliance options but would stress that this needs to be responsive to the unique conditions represented across remote Australia.

### Applying the TCF in Remote Australia

NESA notes that the TCF was designed to operate within non-remote locations across Australia. As such, there is a need to consider its relevance and application in remote Australia, the conditions of remote Australia are significantly different to those in non-remote Australia. Given these high levels of variation, it is critical that time is taken to understand how the TCF would operate in remote locations, and what modifications are required to both the TCF itself, and to other programme elements to ensure that the TCF contributes positively to engagement.

A compliance framework for remote Australia must be designed with the conditions of remote Australia in mind. This should include considerations such as:

- ▶ The specific needs of job seekers in these locations
- ▶ The availability and accessibility of supports to address barriers to participation
- ▶ Community and cultural requirements
- ▶ Community expectations on participation
- ▶ Service delivery requirements such as cost of delivery, access to staff, infrastructure etc

The legislation does not specifically address these considerations. Rather, its effect is to bring remote Australia under the same framework as non-remote Australia. Issues of tailoring and variation will need to be addressed in policy and programme design in consultation with the relevant agencies.

While there is nothing prohibiting this kind of consultation, the current proposal for TCF is occurring in parallel with other legislative changes, rather than informing them. NESAs believes this could compromise the implementation. Greater time to test and design the operational policy would be of value prior to legislative changes being made.

### Provider and Community Discretion is Critical in Decision Making

NESA believes that for the TCF, or any compliance framework to operate effectively in remote Australia, considerable discretion must be provided to communities and service providers to determine what constitutes a reasonable excuse for failing to meet a participation requirement, and the application of demerit points/capability interviews.

The current TCF framing seeks to focus penalties on those job seekers who are wilfully and persistently non-compliant with regards to meeting their obligations. NESAs notes that within CDP, the combination of considerable barriers to participation as well as cultural and community differences mean there is a strong likelihood that many job seekers may be non-compliant but could not be considered 'wilfully and persistently' non-compliant (based on a provider's assessment). Ensuring the discretion and judgement of services in delivering this framework will therefore be critical.

NESA has concerns that in the event that such concerns are not taken into account prior to the roll out of the framework, then (combined with the high number of touch points – see below) the system will be punitive and result in further disengagement from the programme and services in our remote communities.

### Review of Mutual Obligation Requirements: Daily Participation

A significant area of concern with regards to the implementation of the TCF is its relationship to daily participation. Under CDP currently, job seekers are required to meet their participation requirement across five days. Each day of participation constitutes a touch point for non-attendance, exposing CDP participants to greater potential for compliance action than job seekers in non-remote Australia.

NESA has concerns that this creates an opportunity for greater numbers of job seekers to have payments suspended, and subject to the discretion provided to organisations in applying demerit points, will more rapidly result in job seekers moving into a financial penalty phase and off benefit.

NESA notes the already considerable exits from the CDP programme and is concerned that the TCF, if poorly designed and not customised to Remote Australia would exacerbate this



situation. The current scale of programme exits cannot be attributed to employment or job seeker mobility alone.

It is NESAs view that job seekers are electing to opt out of the programme as a result aspect of mutual obligation and activity requirements, which do not adequately balance individual autonomy or needs within the community. While a reduction to 20 hours per week addresses aspects of this, based on feedback from our members, the current rigid daily participation and compliance requirements remain a major issue.

Decisions to not participate have flow-on effects in communities in terms of community income levels, but also cohesion and community engagement. Drops in caseload also impact considerably on investment available to deliver services under the current payment model. While individuals are free to exit the programme if they wish, if they are doing so because of issues in programme design, then these design features need to be reviewed.

It is NESAs view that the social contract between Government and Indigenous people and residents in remote Australia must be reconsidered for any changed compliance framework to operate. Both Government and the communities in which CDP operates share an underpinning belief in the value of work, and the need to ensure that 'sit down money' is not a feature of community fabric. The current framing and monitoring of mutual obligation requirements do not effectively balance the needs of Government and participants. The opportunity to shift the programme design to allow participants to more flexibly meet requirements through banking hours would be beneficial, and would enable any compliance framework to operate more successfully.

### Removing Cancellation of Payments under the TCF in remote locations

NESA believes that there is an increased likelihood that individuals who have their benefits cancelled because of the TCF will not re-apply for benefit, but rather choose to rely on community and family support. This will have a negative impact on the level of income available in community. We do not believe either of these outcomes is sought through this policy change.

Although aware of the considerable work being undertaken by the Department to streamline re-application processes for job seekers whose payments are impacted by a TCF cancellation, NESA believes there is an opportunity here to look at a different arrangement.

Rather than applying a cancellation for job seekers under the TCF in remote Australia, there are benefits in considering a four-week, non-waivable suspension to payment for affected job seekers. This arrangement would have the same impact for job seekers but would remove the need to re-apply for benefit. It would also allow for those job seekers to be immediately reconnected for re-engagement with their CDP service provider, limiting periods of disengagement in the community. It is NESAs understanding that a change of this nature would require changes to legislation.

### Timeframes for Implementation

Changes in policy must take into consideration the optimum pace of change and level of support to enable organisations and communities to adapt and prepare for successful implementation. NESA notes that on current timelines, the TCF would be in place from 1 February 2019. If a changed compliance framework alone were to be implemented at this

time, this would already represent a considerable change in the coming months, which would require time for development and implementation. However, in addition to the TCF, a range of other considerable changes will be in play including:

- ▶ **Community impacts:** Many regions in remote Australia are impacted by a variety of social, cultural and environmental issues in the early part of the year. This includes leave, wet season, lore and cultural business as examples. As a result, roll out of a significant policy reform at this time will not enable the highest quality implementation.
- ▶ **Uncertain contracting environment:** The current CDP Funding Agreements cease on 30 June 2019. While commitments have been made by both the Minister and the Department that all current service providers will be advised of their contracting arrangements by December 2018, there are operational considerations for services at this time.
- ▶ **Adjustment to new payment model:** The Department is currently working with service providers to design and implement a new payment model for the programme. It is intended that this model would also be introduced on 1 February 2019. Services having to adapt their delivery to this, as well as preparing for compliance changes would be complex.

Additional time for design and implementation would therefore be welcomed as part of this process. It would also allow the development of materials and supporting documentation for service providers, job seekers and communities. It would also allow services to consider any additional service re-design within their organisations (e.g staffing, training etc).

Given the challenges presented, and clear benefits to providing additional time for implementation, NESAs believes that no changes to compliance should commence before 1 July 2019.

## Extending Job Creation Package (JCP) Flexibility to All Job Seekers

In addition to bringing remote Australia under a standard compliance framework, the legislation seeks to provide exemptions from aspects of the TCF for job seekers placed into JCP positions.

Providing greater flexibility for job seekers who are placed in JCP to leave employment without incurring onerous penalties is welcomed. Given the limited number of positions in many remote communities and the ability of job seekers to move into alternative work rapidly, NESAs agrees that they should not be penalised when placed into work which does not suit their needs.

NESA notes however that the ability and opportunity to move into alternative work in remote Australia is limited for all job seekers. As such, this flexibility should be extended to all job seekers who are placed into work in remote Australia, including those who find work in standard CDP brokered roles. This will create equity between job seekers and respond better to the conditions of remote Australia. NESAs would therefore support an amendment to the legislation which extends these provisions to all job seekers.

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