

# Social Security Legislation Amendment (Community Development Program) Bill 2018

## Submission

September 2018



Jobs Australia

| POLICY | INFLUENCE | SUPPORT |



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## 1. About Jobs Australia

Jobs Australia is the national peak body which helps not-for-profit employment and community services all over Australia to provide the best possible assistance to disadvantaged communities and people.

With our expertise in employment services, and because we are funded solely by our members, we can advocate to government and others for what's right and best in helping unemployed people - with real insight and an independent voice.

We represent the largest network of not-for-profit employment-related community services in Australia - with members ranging from small local community agencies to large national charities.

## 2. About this Submission

The views expressed in this submission are the views of Jobs Australia. While our views are informed by our consultations and meetings with our members, they should not be taken to be the views of any provider or group of providers.

## 3. Summary

- Jobs Australia recommends that the Committee reject the Bill.
- CDP is an unfair and punitive program, that disproportionately penalises participants through unreasonable and inflexible participation requirements. These requirements must be aligned with those in non-remote areas.
- Applying the TCF to CDP will make a bad situation even worse, because it will increase the number of job seekers subject to penalties for persistent non-compliance.
- The Government's own modelling suggest that 25% of participants could get a 4 week penalty, and have their payments cancelled, by the second year of the TCF.
- The TCF is not tailored to the needs of remote communities. The decision to apply the TCF to CDP did not involve adequate consultation with providers and it does not reflect their views.
- Removing the ability to have non-payment periods waived through re-engagement will reduce incentives to engage and risk trapping people indefinitely in a cycle of penalties. Penalties should continue to be waivable following re-engagement.
- The TCF will reduce the amount of scrutiny by DHS of decisions by providers that job seekers are non-compliant. This will remove some protections for job seekers, and risks exposing providers to more frequent instances of threatening, aggressive or violent behaviour.
- The exemption of subsidised workers from the TCF will create different rules for different income support recipients and for different workers and does not appear to be well thought through.
- The CDP Reforms and tinkering with the TCF will not significantly reduce penalties.
- More genuine consultation with Indigenous communities is needed, to strengthen and empower them to create more meaningful opportunities for participation and paid employment.



- Jobs Australia endorses the Fair Work and Strong Communities scheme (the APONT model), which shifts the focus from penalising people, to investing in job creation and long-term employment outcomes.

#### 4. CDP is Already Unfair and Punitive. The TCF will Makes it Worse

CDP is causing unnecessary financial hardship, exacerbating poverty, creating disengagement and doing more harm than good in remote Australia. After CDP commenced in 2015, the number of financial penalties applied to CDP participants increased at an alarming rate. Despite having only 30,000 job seekers compared to around 660,000 in jobactive, more financial penalties are applied to CDP participants than to job active participants. CDP participants have also received 5 times as many 'persistent non-compliance' penalties than jobactive participants. These are penalties applied by DHS following three penalties in six months and following a Comprehensive Compliance Assessment.

CDP is experiencing a decreasing number in activity tested participants that can't be fully explained by job placements or movement to non-remote areas, particularly among Indigenous men aged 18 to 301, suggesting they are disengaging entirely from the labour market and support.

A 2017 Senate inquiry found that "CDP is causing real harm to people engaged in CDP and the remote communities in which they live", and that heavy-handed financial penalties are pushing people and communities further into poverty, leading to an upsurge in crime and other social issues<sup>2</sup>.

The very high rates of penalties in CDP are primarily due to the onerous and inflexible participation requirements in CDP compared to non-remote areas. Participants are immediately required to undertake activities for five hours daily, for 46 weeks each year. Even though the number of daily hours will reduce from five to four in February 2019, CDP job seekers aged 18-54 will still need to complete 920 hours each year. By contrast, job seekers of the same age in jobactive are only required to complete 650 hours over six months, and only after 12 months in that program.

The persistently high rate of financial penalties in CDP demonstrates that the punitive approach is not working. The obligations for CDP participants should be no more onerous than in non-remote areas. The application of the TCF will accelerate penalties and increase the number of CDP job seekers subject to penalties for persistent and wilful non-compliance and would make a bad situation even worse.

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<sup>1</sup> ANAO (2017). *Report No. 14 2017/18: Design and Implementation of the Community Development Programme*.

<sup>2</sup> Senate Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)*, December 2017.

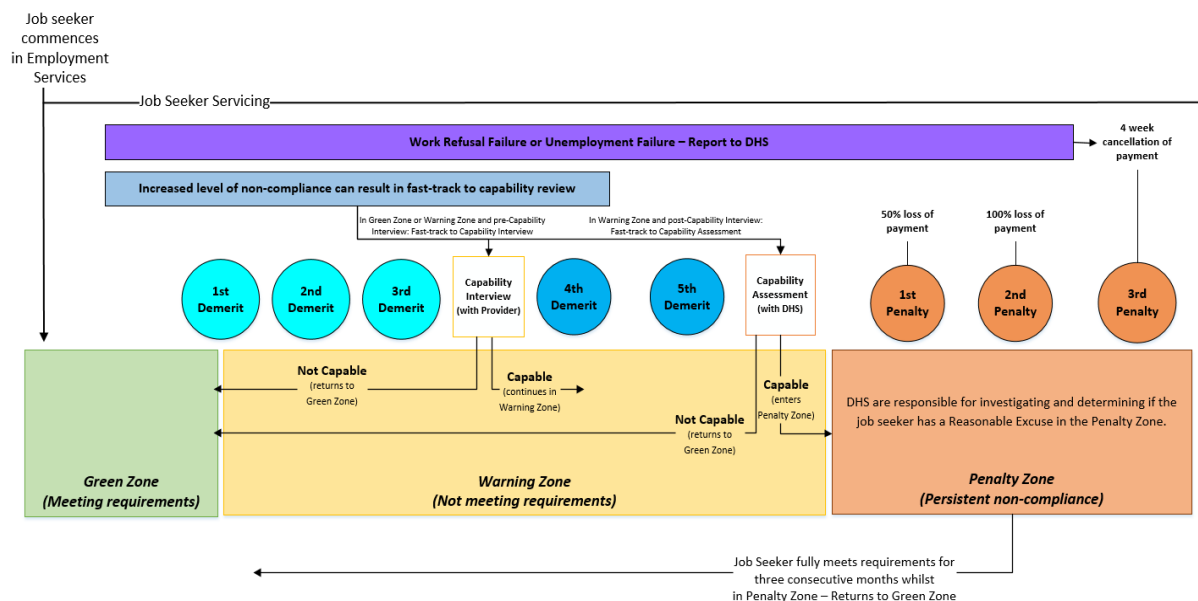
## 5. Features of the Targeted Compliance Framework

The impact of the Bill would be to abolish the current CDP compliance framework (which applied to everyone until 30 June this year) and apply the TCF to CDP participants from February 2019. It would exempt those working in subsidised jobs (although the nature and number of these is not in the Bill).

Under the TCF, job seekers accrue demerits each time they don't meet their mutual obligation requirements. The system involves three compliance zones – Green Zone, Warning Zone and Penalty Zone. Job seekers move from the Green Zone into the Warning Zone and Penalty Zone according to the rate at which they commit failures without valid reasons. Job Seekers are also assessed by their providers after accumulating 3 demerits, and by Centrelink after 5 demerits, to determine their capability of meeting their requirements as set out in their Job Plan. If a job seeker is determined by the system to be not capable, they are returned to the Green Zone. If they are found capable, they progress towards the Penalty Zone.

Each demerit lasts for 6 months for a job seeker in the Warning Zone, and for 3 months in the Penalty Zone. This means that once a job seeker moves into the Penalty Zone, they will cycle through 1, 2 and 4-week penalties for each mutual obligation failure unless they fully meet their requirements for three consecutive months.

**Figure 1: Features of the Targeted Compliance Framework**



The model relies heavily on the assumption that job seeker behaviour can be changed through the application of payment suspensions in the Warning Zone and penalties in the Penalty Zone. The Department of Jobs and Small Business emphasises the availability of a mobile application that shows job seekers how many demerits they have incurred.

When it was first introduced at the 2017 Budget, the new approach was described as aimed at the 40,000 job seekers nationally who have little desire to work, 'systematically' gaming the welfare system and avoiding any financial penalties. The Government said that the new framework would use a 'lighter touch' for the majority who are 'genuinely looking for work' and apply 'real penalties'



to the small group of people who are persistently and wilfully non-compliant. Since the CDP started, 80% of those being found by DHS to be 'persistently and wilfully non-compliant' have been in the CDP.

## 6. Concerns About the Application of the TCF to CDP

### **The TCF is not tailored to the needs of remote communities and lack of consultation**

The TCF is not tailored to the needs of remote communities. It was conceived without considering its impact on CDP, and without any consultation with CDP providers, because it was never intended to be applied to CDP job seekers in remote regions<sup>3</sup>. Following the Budget in May 2017, Minister Scullion announced that the current compliance arrangements would continue while the Government consulted with communities to work out a new model that would work best for remote Australia<sup>4</sup>. In a speech given to a meeting of CDP providers in Cairns on 1 June 2017, Minister Scullion rejected the proposed mainstream compliance framework as "extremely draconian" and not appropriate for remote employment services.

During the meeting a consultation workshop was held to consider a new employment and participation model. A strong consensus emerged between providers and Government that the proposed mainstream targeted compliance framework would be disastrous and not work in remote Australia. Providers were very concerned that many CDP job seekers would quickly move into the compliance phase and get stuck in a cycle of penalties, leading to increased disengagement, social issues and harassment of providers. At the time, the Minister and DPM&C appeared genuinely interested in reform that was designed and implemented 'side by side' with communities, with less emphasis on compliance, and more on assistance. In December 2017 DPM&C released the Remote Employment and Participation discussion paper, which did not canvass the application of the TCF, previously announced in May that year, to CDP. All of this unexpectedly changed following the Budget in 2018, which reversed the previous policy position and announced the application of the TCF to CDP.

### **Government's Own Modelling**

The Government's own modelling tabled in the Senate on the 20th August suggests that, in the first year alone, 4,687 people will receive 4-week penalties and be forced to re-apply for income support. In year two, this rises to 7941. From a caseload that currently stands at close to 30,000, 25% of participants getting a 4-week penalty and having their payments cancelled would be disastrous for them, their families and their communities.

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<sup>3</sup> This point was explained to CDP providers by a representative from the Department of Jobs and Small Business at the June 2018 CDP Provider Business Meeting in Adelaide.

<sup>4</sup> Minister Nigel Scullion, 2017-18 Budget: Community Development Programme – What Was Announced in the 2017 Budget?, May 9, 2017, <http://www.nigelscullion.com/media-hub/2017-18-budget-community-development-programme/> accessed 19 September 2018.



One Jobs Australia member organisation examined its current Work for the Dole caseload and discovered that only 20% of participants had had no No-Show No Pay reports in the last six months, while 60% had had 8 or more penalties - meaning that, under the TCF, they would have been likely to have had their payments cancelled.

### **Increasing Penalties Does Not Drive Attendance in Remote Australia**

Indigenous people living in remote communities often have strong collective obligations to family, community and culture. These obligations can sometimes come into conflict with paid employment and obligations to participate in CDP activities to receive income support. This means that individually-centred notions of paid work and earning income are not always seen in the same way as non-Indigenous people. For many CDP participants, participating and engaging meaningfully in their community does not necessarily equate with participation in work for the dole to receive payments from Centrelink. We can already see that, despite high penalties, actual attendance at Work for Dole has barely shifted over the last two years. More efficient application of penalties to persistently non-compliant job seekers in CDP is unlikely to result in the intended behavioural change. Instead, the TCF is more likely to increase poverty than attendance.

### **Abolition of Waivers**

While the TCF would reduce the maximum non-payment period from eight weeks to four, it would remove the ability under current arrangements to have outstanding penalties waived following re-engagement. There is a risk that people will become trapped in the Penalty Zone indefinitely, or otherwise disengage because it is too difficult to comply.

It is worth noting that Minister Scullion has frequently cited waivers of eight-week non-payment penalties in defence of the current arrangements<sup>5</sup>. The abolition of waivers under the TCF will remove this protection and is likely to result in higher levels of lost income and poverty.

### **Removal of Provider Discretion**

Under the existing job seeker compliance framework in CDP, providers have discretion to not report non-compliance to DHS if they do not believe it is the best strategy to re-engage the job seeker at that point in time. This discretion is abolished under the TCF, where providers no longer have the option to not use the compliance system. The TCF automates the link between job seeker non-compliance and the application of demerits. If the non-compliance does not fall within a defined set of accepted reasons, then demerits are automatically applied by the IT system.

The purpose of removing provider discretion is to standardise and streamline the setting of requirements and reporting of non-compliance. The increase in automation and abolition of provider discretion enables the TCF to more efficiently focus resources and penalties on job seekers who persistently and wilfully do not comply with their requirements.

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<sup>5</sup> Senator the Hon Nigel Scullion, 2016, Facts don't back up ANU report on CDP, <https://ministers.pmc.gov.au/scullion/2016/facts-dont-back-anu-report-cdp>

Given the very high rate at which financial penalties are applied to job seekers in CDP already, the removal of discretion to not take compliance action poses a serious risk that the number of financial penalties will increase further. The TCF is aimed at job seekers who repeatedly fail their mutual obligation requirements. Most CDP participants fall into this category for a range of reasons, and will bear the full force of the new, more automated framework.

### **Reduced Scrutiny by DHS**

The TCF reduces the level of scrutiny applied by DHS to determinations of non-compliance by providers. If a participant fails a mutual obligation requirement, such as attending an appointment with their provider or attending a Work for the Dole activity, their provider will apply demerits while the participant is in the Warning Zone.

It is only after a job seeker accumulates five demerits within six months and enters the Penalty Zone following a Capability Assessment that DHS determines if a failure has occurred without a reasonable excuse and applies a financial penalty.

Under the current compliance framework, DHS rejects at least 60% of provider recommendations for penalties on a case by case basis due to provider mistakes, or because its own backlog in assessing breaches means that a penalty cannot be applied. Reducing the level of scrutiny applied by DHS while job seekers are in the Warning Zone is likely to lead a more rapid accumulation of demerits than would otherwise occur with DHS involvement each time a failure occurs.

### **Increased Risks for Providers**

Higher rates of penalties and transferring the function of applying demerits on to providers carries risks of more frequent instances of threatening, aggressive or violent behaviour by job seekers directed towards provider staff. Jobs Australia is aware of a growing number of incidents of violent and threatening behaviour of CDP participants directed towards their CDP provider under the current arrangements, resulting in staff being injured and property damaged. Very recently, a provider reported that a participant threatened to cut their activity supervisor's throat, causing fear and trauma for the staff member. Under the TCF, the reduced role of Centrelink and the increased likelihood of suspensions and penalties will see more frequent instances of inappropriate behaviour directed towards providers, who would be increasingly held responsible by job seekers.

### **Centrelink Assessments Do Not Adequately Protect CDP Participants**

Under current arrangements, Comprehensive Compliance Assessments (CCAs) undertaken by DHS are more likely to result in a finding of persistent non-compliance and the application of a Serious Penalty eight-week loss of income support for CDP participants (57%) than for non-CDP participants (42%). This highlights the unfairness of CDP participation requirements and demonstrates that Centrelink assessments are not able to protect CDP participants from them. This means that under the TCF, CDP participants will be more likely than all other participants to pass into the Penalty Zone following a Compliance Assessment performed by DHS.



### **Exemption of Subsidised Jobs**

Further, the Bill will exempt the application of the TCF to participants engaged in subsidised employment but still on a partial rate of income support. So rather than contribute to a standardisation of compliance arrangements which appears to be one justification for the Bill, the exemption will create a double standard for participants in subsidised compared to those working in non-subsidised employment. In contrast to every other job seeker in Australia, CDP participants will be free to refuse suitable subsidised employment without penalty, while those already in subsidised employment will be free to refuse unsubsidised employment, quit a subsidised job or get sacked for misconduct.

It is far from clear that the approach will contribute to the achievement of sustainable outcomes in either unsubsidised or subsidised employment. It also risks creating scenarios whereby two employees with the same employer doing the same job for the same number of hours could be subject to two completely different compliance systems. The proposed exemption in the Bill appears arbitrary and not well thought through.

### **CDP Reforms and Softening of TCF Will Not Significantly Reduce Penalties**

Since this year's Budget several formal and informal announcements by the Minister and DPM&C indicate that the Government has some concerns about applying the TCF to CDP and is taking steps to ameliorate its effects.

Reforms announced as part of the Budget include:

- Exempting CDP participants in subsidised employment from the TCF.
- Improved work capacity assessments that will broaden the scope to identify barriers to employment and help ensure that job seekers are not required to participate beyond their capacity. Details have not yet emerged. It is essential that the development of the new assessment process is informed through consultation with experts in the fields of remote Indigenous health and disability.
- Reducing maximum participation requirements from 25 to 20 hours per week. While this appears to be a positive development, making it easier for participants to comply with requirements and avoid penalties, the reality is that participants in Work for the Dole will continue to be required to attend every day from Monday to Friday. The continuation of this inflexible approach will not reduce the high rates of penalties being applied. Further, when looked at on a yearly basis, the 20 hours per week requirement is still higher than requirements in non-remote areas, which only apply for six months each year, and has been described as 'blatantly discriminatory'.

Further, Jobs Australia understands that provider payments will no longer be linked to providers taking compliance action against job seekers, which is a positive development.

Jobs Australia understands that PM&C is also considering modifications to the TCF, which could provide marginally more leeway to reduce penalties. These modifications may include:

- CDP job seekers would not be subject to a default requirement to report and record their own attendance online or on the job seeker app.
- There will be no default minimum number of job searches



- Turning off automatic same day suspensions of payments and application of demerits.
- Providers will have until the following day to record attendance.
- Simplifying the reapplication process following a 4-week penalty.

While these reforms and modifications of the TCF may make some difference, they tinker at the edges. They will not succeed in reducing the already very high rate of penalties and will not do enough to prevent the number of penalties rising further. Under the TCF, the inflexible requirement for daily attendance will continue to drive high rates of penalties and disengagement.

## 7. Recommendations

### **Reject the Social Security Legislation Amendment (Community Development Program) Bill 2018**

Jobs Australia recommends that the Committee reject the Bill.

### **Enable job seekers to have their income support re-start when they re-engage.**

#### **Alignment of Participation Requirements**

Immediately reduce mutual obligation requirements in CDP to align them with levels imposed on jobactive participants. The requirements need to be adjusted so that most participants can meet them most of the time and to more closely align with the requirements of other income support recipients. There must be flexibility in scheduling.

#### **Better Consultation**

There needs to be a more genuine commitment to consultation with Indigenous communities, leaders and organisations, so they are empowered to make decisions about how the program operates in their community, and have a stronger sense of ownership and buy-in.

#### **Fair Work and Strong Communities Proposal**

Jobs Australia has endorsed the Fair Work and Strong Communities proposal (the 'APO NT' model) for a Remote Development and Employment Scheme developed by Aboriginal Peak Organisations NT (APO NT)<sup>6</sup>. The APO NT model seeks to shift the focus from penalising people to long employment

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<sup>6</sup> Aboriginal Peak Organisations Northern Territory (APONT) (2017). Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme, [http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report\\_Online.pdf](http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf)



outcomes. Under the model providers would have discretion over when application of penalties is the best way to engage people, in accordance with wishes of local communities.

The APO NT proposal was developed in consultation with Aboriginal organisations, national peak bodies and CDP providers, and offers a better solution to the provision of employment services in remote Australia. The key elements of the APO NT proposal include investing in the creation of paid employment at award wages, local community control, flexibility and fairness in mutual obligation, and Indigenous leadership and management through oversight by an independent body with an Indigenous led board. It emphasises incentives, not punishments. Rather than managing compliance, it takes a long-term investment approach to case management, economic and community development. The APONT model is bottom-up, not top-down, and would support the Government's intention to work with, not do things to, Aboriginal and Torres Strait Islander people. There is less emphasis on administration, and more on empowering and strengthening communities to create meaningful opportunities for participation, based on people's individual capacity and needs<sup>7</sup>.


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<sup>7</sup> For an overview of the APONT proposal, see [http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Summary\\_online.pdf](http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Summary_online.pdf)

## 8. Attachment A: Targeted Compliance Framework Compliance Zones

**New compliance system** from 1 July 2018  
Know where you stand and how the new rules can affect you



**Meeting all your requirements**

**Meeting all your requirements:**

- Mutual obligation requirements include job search, attending provider appointments, job interviews and activities.
- Tell your provider ahead of time if you can't meet your requirements.

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**Warning (1 to 5 demerits)**

**If you do not meet your requirements you will get a demerit:**

- Every time you miss your requirements your payment will be suspended. Contact your provider, meet the requirements and you will get your payment.
- Meet all your requirements to get back to the ✔ zone.
- If you continue to get demerits you will have a review with your provider and Centrelink to see why you are not meeting your requirements.
- If you get 5 demerits you will move to the ✘ penalty zone.

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**Financial penalties**

**In this zone, you will get financial penalties:**

- 1st time fail to meet your requirements = lose 1 week's pay.
- 2nd time fail to meet your requirements = lose 2 weeks' pay.
- 3rd time fail to meet your requirements = payment cancelled, 4 week wait to re-apply.

**Demerits**  
You will get demerits if you do not...

- agree to a Job Plan
- do job search
- attend or behave appropriately at a provider appointment
- attend or behave appropriately at a third-party appointment
- attend or behave appropriately at an activity
- attend a job interview
- behave appropriately at a job interview
- act on a job referral.

**Payment cancelled**  
4 week wait to re-apply if you:

- fail to accept or commence suitable work
- voluntarily leave or are dismissed for misconduct from suitable work.

**Need help? Speak to your provider.**

**Check your status – what do the symbols mean?**



**Meeting your requirements**

You will see this on your online dashboard when you meet all of your requirements, like attending your activities and appointments, doing your job search, and attending job interviews.

- Use the dashboard to record the jobs you have applied for.
- Check your To-Do List.
- Confirm the appointments, activities and job interviews you have attended.

If you miss a requirement your payment will be suspended until you re-engage with your provider and you may get a demerit. But you will not lose payments.

**Important!**  
Stay in the Green Zone - tell your provider ahead of time if you can't meet your requirements.



**Warning (1 to 5 demerits)**

**It's time to take control.** You will see this on your dashboard when you have not met your requirements and you have demerits.

You will receive demerits if you don't have a valid reason and you do not:

- Agree to your Job Plan or Participation Plan.
- Complete your Job Search.
- Attend or behave appropriately at appointments with your provider and other organisations.
- Attend or behave appropriately at your activity.

Each demerit lasts 6 months and then expires.

If you miss a requirement your payment will be suspended until you re-engage with your provider. But you will not lose payments.

**Important!**  
To move back to the Green Zone, you have to meet all your requirements until your demerits expire.



**Financial Penalties**

You will see this on your dashboard when you have moved to the Penalty zone.

In this zone, you will get financial penalties if you don't meet your requirements.

- The first time you fail to meet your requirements you will lose 1 week's pay.
- The second time you fail to meet your requirements you will lose 2 weeks' pay.
- The third time you fail to meet your requirements your payment will be cancelled and you will have to wait 4 weeks before you can re-apply.

**Important!**  
You have to meet all your requirements for 3 months to move back to the Green Zone.

**Provider and Centrelink reviews**

In the warning zone, if you get **3 demerits** you will have a Capability Interview with your provider. If you get **5 demerits** you will have a Capability Assessment with Centrelink.

You will have a chance to discuss the reasons you haven't met your requirements, identify issues, and review your Job Plan and make sure you can meet your requirements.

If Centrelink decides at a Capability Assessment you can meet your requirements, you will move to the Penalty Zone where you will lose money if you do not meet your requirements.

**Payment cancelled anytime, 4 week wait to re-apply if you...**  
fail to accept or start a suitable job or if you leave a suitable job or are dismissed for misconduct without a good reason.

(Source: Department of Jobs and Small Business)