Chapter 1
Introduction

Referral

1.1   On 2 December 2015, the Social Security Legislation Amendment (Community Development Program) Bill 2015 (the bill) was introduced into the Senate by the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion.[1]

1.2   On 3 December 2015, pursuant to the Selection of Bills report, the Senate referred the bill to the Senate Finance and Public Administration Legislation Committee (committee) for inquiry and report by 29 February 2016.[2]

Purpose of the bill

1.3   The bill seeks to amend the *Social Security Act 1991* (Social Security Act) and the *Social Security (Administration) Act 1999* (Administration Act) to:

> [S]trengthen incentives for job seekers in remote Australia to actively engage with their income support activity requirements and provide greater opportunities to participate and remain in paid work.[3]

Conduct of the inquiry

1.4   Details of the inquiry, including links to the bill and associated documents, were placed on the committee's website at www.aph.gov.au/senate_fpa.

1.5   The committee directly contacted a number of relevant organisations and individuals to notify them of the inquiry and invite submissions by 29 January 2016. Submissions received by the committee are listed at Appendix 1.

1.6   The committee held a public hearing in Melbourne on 19 February 2016. A list of the witnesses who gave evidence at the public hearing is available at Appendix 2. The Hansard transcript may be accessed through the committee's website.

Context of the bill

1.7   The Explanatory Memorandum (EM) states:

> Welfare reliance is at its most concentrated in remote Australian communities. In very remote areas, almost one in five adults of workforce age are in receipt of income support payments. People in remote Australia are moving onto welfare at a young age and staying there for life. Very few people are transitioning into full time paid employment.

> Long term welfare reliance on this scale is detrimental to individuals and to communities.[4]

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1   *Journals of the Senate*, No. 133, 2 December 2015, pp 3585-3586.

2   *Journals of the Senate*, No. 134, 3 December 2015, pp 3624-3625.

3   EM, General Outline.

1.8   According to the EM, the Community Development Program (CDP), introduced on 1 July 2015, addresses this problem:

> [CDP] assists people to gain the skills, experience and commitment necessary to find paid work where it exists and enables them to contribute meaningfully to their community in the absence of paid work, through participation in continuous CDP activities. CDP includes employment incentives, incentives to establish businesses and access to vocational training and support to address pre-employment barriers such as drug and alcohol problems.[5]

1.9   Under the CDP, all adults between 18 and 49 years who are not in work or study are required to undertake work-like activities for up to 25 hours per week, depending on their assessed capacity to work.[6]

1.10   Notwithstanding the introduction of the CDP to address welfare reliance, the EM notes:

> [O]utcomes suggest that current incentives within the income support system need to be stronger for those in remote communities to drive the behavioural changes needed to get people active, off welfare and into work.[7]

1.11   In particular, the EM states that the national job seeker compliance framework, which applies financial penalties and suspensions for missing appointments and activities, is complex and difficult for remote job seekers to understand.[8] The EM explains that the consequence of not attending activities (No Show No Pay penalties) are not immediately felt, with long periods of up to five weeks or more before penalties are applied:

> For many remote job seekers the penalty feels arbitrary and not connected to their behaviour. As a result, behaviour is not changing.
>
> The CDP caseload, while representing only five per cent of all job seekers, currently accounts for over 60 per cent of all reported No Show No Pay failures. Despite this, attendance in CDP activities remains low. In addition, current settings are not geared to readily support job seekers to seamlessly move in and out of intermittent work which is often the only type of work available in remote Australia.
>
> To address these issues, the Bill introduces more direct and immediate payment and compliance arrangements that will allow job seekers to easily

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4   EM, General Outline.

5   EM, General Outline. The CDP replaced the Remote Jobs and Communities Program (RJCP).

6   Information Sheet, *Information Sheet: Reforming the Remote Jobs and Communities Programme*, p. 1. Available at: http://www.dpmc.gov.au/sites/default/files/publications/RJCP%20Reforms%20-%20Information%20Sheet_1.pdf (accessed 11 February 2016).

7   EM, General Outline.

8   EM, General Outline.

understand and comply with their requirements and avoid financial penalties – and 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. The amount of income support a jobseeker receives will depend on their participation in CDP activities rather than complex thresholds and taper rates.[9]

Key provisions of the Bill

Remote income support payments

1.12   The bill would insert a new Part 2.28 into the Social Security Act to provide for the payment of remote income support payments by CDP providers.[10] In summary:

> Division 1 of Part 2.28 provides for the payment of remote income support payments (that is disability support pension, parenting payment, youth allowance, newstart allowance or special benefit) to remote income support recipients by Providers, rather than by the Department of Human Services [DHS] as is currently the case.[11]

1.13   The EM describes the roles of CDP providers and DHS, as envisaged under the proposals in the bill:

> Income support payments…for remote job seekers will be made weekly by [CDP] Providers, instead of [DHS] making payments each fortnight under current arrangements. Providers will be based in remote regions and be accessible and able to make payments to individuals.

> Responsibility for receiving, processing and determining claims for a job seeker's payment (as well as assessing eligibility, payability and capacity to work) will remain with [DHS] as is currently the case. Eligibility for income support, the level of income support and the level of activity requirements will remain unchanged. [DHS] will continue to fully administer other payments such as Family Tax Benefit and income management.[12]

1.14   In order for a person to receive a remote income support payment they must meet certain conditions relating to participation requirements and activity tests.[13]

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9   EM, General Outline.

10   See Item 25 of Schedule 1, which would insert Proposed Part 2.28 'Remote income support payments' into the *Social Security Act 1991* (Social Security Act). Item 1 of Schedule 1 would insert a definition of 'Community Development Program provider' into the Social Security Act. Item 3 of Schedule 1 of the bill inserts a definition of 'remote income support payment' into the Social Security Act. A 'remote income support payment' means: a) disability support pension; or b) parenting payment; or c) youth allowance; or d) newstart allowance; or e) special benefit.

11   EM, p. 14.

12   EM, p. 7.

13   Proposed subsection 1061ZAAX(2).

There are different conditions which apply, depending on the type of income support payment which is relevant in the circumstances.[14]

Ministerial determinations

1.15　Although the EM states that the bill will set up a new obligation and compliance regime, the detail of this regime is to be determined by the Minister through legislative instruments.

Determination of remote income support regions

1.16　The bill would insert a provision in the Social Security Act to allow the Minister to make a legislative instrument determining that a specified region in Australia is a 'remote income support region'.[15] In making a determination about a 'remote income support region', the Minister must consider the following:

- whether the region is remote;

- the level of social and economic disadvantage within the region, including the levels of unemployment, social welfare and education of persons living in the region; and

- whether there is likely to be a CDP provider capable of providing remote income support payments to persons residing in the region.[16]

1.17　The EM, noting the matters that the Minister must have regard to, states:

> The intention is that these arrangements will be carefully phased in based on community and Provider willingness and readiness.[17]

Determination of scheme for remote income support recipients

1.18　The bill would also insert into the Social Security Act provision for the Minister to determine, by legislative instrument, a scheme for the imposition of obligations on remote income support recipients and ensuring compliance with those obligations.[18]

1.19　A lengthy, but not exhaustive, list of matters which may be included in the Minister's determination of the scheme is also included in the proposed amendments.[19] Those matters include:

- obligations of remote income support recipients;

- circumstances in which a person will be exempt from those obligations;

14　EM, p. 16.

15　Proposed subsection 1061ZAAZ(1).

16　Proposed subsection 1061ZAAZ(2).

17　EM, p. 4.

18　Proposed subsection 1061ZAAZA(1). Item 3 of Schedule 1 of the bill inserts a definition of 'remote income support recipient'.

19　Proposed subsection 1061ZAAZA(2).

- the determination of reasonable excuses for failing to comply with obligations;

- the functions, duties and powers of employees and officers of Providers under the scheme; and

- review of decisions of employees or officers under the scheme.[20]

1.20   The Minister's determination of a scheme can also include the consequences for remote income support recipients who do not comply with obligations:

> Consequences will include the deduction of penalty amounts to remote income support payments where a remote income support recipient fails to comply with their obligations under the scheme and the method for calculating those penalties.[21]

1.21   Determinations about a scheme can be varied or revoked by the Minister at any time.[22]

1.22   The bill also provides that a person is not taken to be a worker or employee for the purposes of various Commonwealth Acts, including the *Work Health and Safety Act 2011* and the *Safety, Rehabilitation and Compensation Act 1988* merely by undertaking an activity in accordance with an obligation imposed under the determination.[23]

1.23   The EM provides some details on the job seeker compliance arrangements which are anticipated to be part of the Minister's determination:

> Providers will be able to apply a financial penalty to each job seeker for every day they do not attend activities unless there is a reasonable excuse. These arrangements will be implemented through a legislative instrument.

> In practice, the instrument will enable the application of penalties on a weekly basis and the maximum daily penalty will be equivalent to a day's remote income support payment. However, there will be greater flexibility within this maximum penalty. That is that penalties will not be limited to a full day but instead will allow Providers to reduce an hour's payment for an hour's non-attendance – lessening the financial burden on the job seeker while maintaining the behavioural impact. This will strengthen the link between attending activities and receiving income support. The instrument will also provide arrangements to ensure job seekers with a reasonable excuse for not attending an activity, such as illness, are not penalised, as is currently the case.[24]

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20   See proposed paragraphs 1061ZAAZA(2)(a), (b), (d), (f) and (g), respectively.

21   EM, p. 20.

22   Proposed subsection 1061ZAAZA(3).

23   Proposed subsection 1061ZAAZA(4).

24   EM, p. 8.

Modification of Social Security law

1.24   The bill would amend the Social Security Act to insert a provision which would allow the Minister, by legislative instrument, to determine that the social security law 'has effect, in relation to remote income support payments to remote income support recipients, with any modifications that are prescribed'.[25]

1.25   The EM states that the main purpose of this provision is:

> [T]o enable the Minister to address any unforeseen or unintended consequences of the highly complex interactions between a determination [about a scheme for remote income support recipients] and the social security law as amended that may arise at a later date.[26]

New income thresholds

1.26   The bill also provides for an increase to the income thresholds, and taper rates before a support payment is reduced, for individuals receiving remote area support payments.[27]

1.27   The EM outlines the reason for the increase to income thresholds:

> While full time work is always the goal, the reality in remote Australia is that casual and intermittent work are more common and there are few opportunities for full time work. Currently short term work is often done by people flown in – at significant cost. To increase incentives for local people to take up available work, these new measures would allow job seekers in remote income support regions to earn more income before their income support reduces.[28]

1.28   The EM also explains the impact of a person attending paid employment in lieu of their CDP activities:

> If a job seeker undertakes paid work instead of attending their CDP activities, they would receive less income support (as penalties are applied) and receive more real income. With low complexity in the system, job seekers will be able to seamlessly move between CDP activities and intermittent and casual employment building their employment skills and experience. It is anticipated that this will help them to ultimately secure sufficient work to exit the income support system.[29]

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25   Proposed section 1061ZAAZC. The Minister's determination on social security law pursuant to proposed section 1061ZAAZC may be part of a determination about a scheme for remote income support recipients under proposed new section 1061ZAAZA.

26   EM, p. 22.

27   See Items 26-44 of Schedule 1.

28   EM, pp 8-9.

29   EM, p. 9.