COMMONWEALTH OMBUDSMAN

Submission by the Commonwealth Ombudsman

Department of the Prime Minister and Cabinet Discussion Paper: Remote Employment and Participation

Submission by the Commonwealth Ombudsman, Michael Manthorpe

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Introduction and summary

As part of its broad oversight role of Commonwealth government administration, the Office of the Commonwealth Ombudsman (the Office) has oversight responsibility for the Department of the Prime Minister and Cabinet (PMC), the Department of Human Services (DHS), and the Department of Jobs and Small Business.[1]

The Office has had oversight responsibility for the Community Development Programme (CDP) since its commencement on 1 July 2015. Prior to this, the Office had oversight of the Remote Jobs and Communities Programme and the Community Development Employment Projects (CDEP) scheme.

Our Office welcomes the opportunity to comment on aspects of a proposed new model for remote employment and participation. While it is not the role of the Office to comment on the merits of government policy, we are attentive to situations where the practical application of a policy has significant administrative consequences. We keep a watching brief on administrative themes emerging from our complaint investigations and the feedback and information we get during consultation and outreach.

Over the past three years, the Office has received a small number of complaints about the CDP. In our opinion, the relatively low complaint numbers does not mean the CDP has been without administration problems. It is indicative of the generally low levels of complaint made by Aboriginal and Torres Strait Islander people, particularly where they do not have representation or support.[2]

In addition to receiving and investigating individual complaints about these programs, our staff have conducted outreach to remote communities, consulted with community organisations and stakeholders and investigated systemic issues associated with remote employment programs. This experience puts us in a strong position to comment on what has and has not worked well with the CDP and informs our submission on the proposed new model.

Background

The purpose of the Office of the Commonwealth Ombudsman is to:

- Provide assurance that the organisations we oversight act with integrity and treat people fairly
- Influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action

[1] Formerly the Department of Employment

[2] Research commissioned by the Office in 2010 found many Aboriginal and Torres Strait Islander peoples, particularly those in rural and remote areas, are unlikely to complain and have little awareness of official complaint channels: see Winangali Indigenous Communication & Research, *Improving the services of the Commonwealth Ombudsman to Australia's Indigenous peoples* (November 2010).

- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Commonwealth Ombudsman's unique position gives us an understanding of individual experiences of members of the public who are dissatisfied with the way government has dealt with their issue. Parliament has given the Ombudsman powers to investigate complaints by obtaining information and records that would not ordinarily be available to a person acting on their own behalf. Over time, through investigating complaints about the actions of a particular Commonwealth department or agency, the Office is able to build up a detailed picture of an agency's operation, including information about new complaint trends and systemic issues.

Complaints provide an important opportunity to identify and correct mistakes and can be an early warning system for systemic or deeper problems. An accessible complaints process is particularly important for vulnerable or disadvantages groups. Fair and transparent government administration depends on the capacity to identify and address complaints from these groups. In the experience of the Office, Aboriginal and Torres Strait Islander peoples, and particularly those living in rural and remote regions, do not generally access existing review processes or complaints channels. Aboriginal and Torres Strait Islanders' awareness of programs, services and decisions affecting them is often low.

In 2017, our Office conducted outreach to remote communities in the North West Alice/Central Desert region of the Northern Territory, the APY[3] Lands in South Australia and West Kimberley and Carnarvon in Western Australia. During this outreach we received considerable feedback about the CDP from a range of stakeholders, including CDP providers, job seekers, government agencies, legal services, Indigenous organisations, peak bodies and other community organisations.

We have provided feedback to PMC and DHS about the issues raised during outreach and the systemic issues arising from our complaint investigations. We will continue to engage with PMC in the development of a new model for remote employment and participation.

Response to Discussion Questions

Using the questions in the Discussion Paper, this submission will comment on the three proposed options for a new model for remote employment and participation:

- option 1 – new waged-based model
- option 2 – CDP 2
- option 3 – current CDP with improvements

Our Office will not comment on whether one option should be preferred over another, or the merits of any particular model. That is a matter for government policy. This submission focuses on the administrative principles and issues to be taken into account, whatever model is adopted.

[3] Anangu Pitjantjatjara Yankunytjatjara Lands

Objectives and design principles of a new model

Do the objectives and design principles outlined sound right? Is there anything else that a remote employment and participation model should aim to achieve?

Our Office welcomes the Government's responsiveness to community feedback about a proposed new model for employment and participation in remote communities. We agree with the broad principles and objectives for a new model as set out in the Discussion Paper.[4] These are consistent with the stakeholder feedback we have received and include:

- greater local control and decision making
- a more simplified and flexible system
- engaging job seekers in meaningful work or job training activities
- review of the current maximum hours of mutual obligations.

In addition to the objectives and principles outlined in the Discussion Paper, in our view, it is important the framework supporting any new model and its administration should be robust, fair, transparent and rigorously monitored. It should include:

- accessible and appropriate review mechanisms
- a safe, accessible and responsive complaints and feedback mechanism, which delivers outcomes for complainants and learnings for administrators
- mutual obligation requirements which reflect an individual's capacity, cultural obligations and the reality of the employment market in remote communities
- improved work capacity assessment processes that are accessible, effective and culturally appropriate
- evidentiary requirements for mutual obligation requirements and work capacity assessments which take into account barriers people face in obtaining medical evidence in remote communities
- wages/top up payments (if a wage based model is adopted), that are carefully monitored and consistently administered
- a fair, transparent and proportionate compliance system
- incentives and support for providers to deliver high quality services
- a comprehensive evaluation.

[4] at pages 5-6 of the Discussion Paper

Option 1 – New Wage-Based Model

The option of a 'three tiered' approach in a new model is designed to stream job seekers according to work capacity – will streaming assist in better servicing the caseload and moving people along a pathway to employment?

Our Office will not comment on whether streaming is a preferred option. Based on feedback we have received about the CDP, if a 'three tiered' streaming approach is adopted, the policy settings and servicing for each tier should ensure that:

- streaming tools are effective and culturally appropriate
- job seekers can transition flexibly between streams as their circumstances change, and can stay in a stream for as long as they need
- default mutual obligation requirements[5] are appropriate within each stream
- work capacity assessments and other administrative processes can identify and support more vulnerable job seekers.

Is there merit in moving elements of a new model outside the national income support and compliance system to ensure a simpler and more accessible system for job seekers? If so, which elements?

On outreach to remote communities, we heard consistent messages that people would prefer wages to the current 'work for the dole' system. If any elements of a new model are moved outside the national income support and compliance system, it should include adequate safeguards and protections to ensure more vulnerable job seekers are not disadvantaged.

Complaints to our Office have shown some job seekers may not engage with their CDP provider due to factors beyond their control, such as an undiagnosed medical condition. They may fall through the cracks and have their payments suspended without information about their particular vulnerability being available and properly assessed. During outreach visits, some communities advised that some job seekers do not raise their personal issues directly with providers because they are not comfortable in doing so.

DHS staff and authorised review officers have access to DHS systems and have a more complete picture of the person's circumstances. They are generally skilled and experienced in administering payments, assessing a job seeker's compliance and conducting internal reviews. They can assess whether a job seeker has vulnerabilities which may prevent them from complying with their mutual obligations, or whether their past history indicates another payment type (such as disability support pension) may be suited to their circumstances. DHS can refer job seekers for a social work assessment where appropriate.

[5] A job seeker must fulfil mutual obligation requirements in return for activity-tested income support. These may include: attending a certain number of provider appointments, undertaking job search, acting on job referrals and participating in other activities to improve their employment prospects. The extent and combination of activities will vary, depending on the requirements for different job seeker cohorts and the assessed work capacity of individual jobseekers.

Any move away from the national income support and compliance system will need to address:

- potential conflicts of interest (for example, where providers administering payments could be advantaged by the application of penalties, or by not paying job seekers their full top up wages)
- support and training for providers to make the correct wage payments
- providers having sufficient knowledge, training and skills to make robust, well-reasoned and consistent decisions, replicating DHS' expertise and systems. This includes, identifying vulnerability, assessing non-compliance and referring job seekers for assistance and further assessment where appropriate
- consistency in decision making and administration
- job seekers potentially being disadvantaged and falling through the cracks when transitioning between tiers, where some tiers are administered by DHS and others by various providers
- increased complexity for job seekers if multiple agencies are involved in decision making and internal reviews. Our stakeholder engagement and outreach have shown that Aboriginal and Torres Strait Islander peoples are less likely to appeal unfavourable decisions and this tendency may increase if the system is complex and involves multiple agencies
- robust processes for referrals and information sharing between administrators about job seekers' vulnerabilities and needs, particularly where payments and penalties are administered by different bodies.

How could we improve the job seeker assessment process to ensure job seekers are streamed appropriately, their strengths and aspirations are taken into account and their hours match their capacity to work?

Our Office has investigated several complaints from CDP participants which have raised concerns about the current job seeker assessment processes. In our investigations, we found:

- The complainants had comprehensive compliance assessments[6] from DHS which identified barriers and vulnerabilities, such as intellectual or cognitive disability, other medical conditions, low literacy and numeracy skills and caring responsibilities. The comprehensive compliance assessments recommended providers intervene to help the complainants obtain further medical evidence and comprehensive health assessments. However, the complainants were not able to obtain this evidence due to their barriers, lack of provider support and limited access to medical specialists in remote locations.
- Due to difficulties obtaining medical evidence, some complainants could not obtain an Employment Services Assessment (ESAt).[7]

[6] A Comprehensive Compliance Assessment is a holistic assessment to determine why a job seeker is not meeting their Mutual Obligation requirements when they are having difficulty doing so. The assessment looks at whether the job seeker is being deliberately and persistently non-compliant or if there are unidentified barriers preventing the job seeker from fully meeting their Mutual Obligations requirements and for which they need additional or alternative assistance. Department of Jobs and Small Business, https://docs.jobs.gov.au/system/files/doc/other/comprehensive_compliance_assessment_guideline.pdf accessed 8 January 2018.

[7] An Employment Services Assessment (ESAt) considers the job seeker's barriers to finding and keeping a job from disability, injury, illness or other disadvantage. ESAts identify interventions to assist in overcoming

- In some complaints it was not clear whether the recommended interventions had been implemented.
- Despite their identified barriers and vulnerabilities, the complainants were required to do full time work for the dole[8]. This raises questions about the effectiveness of the ESAt referral process and the flow of information between DHS and providers.
- One complainant had a vulnerability indicator[9] applied to his DHS record for a period, but this was not reviewed after it automatically expired.
- One complainant needed an interpreter but did not have this recorded on his DHS record.

We have provided detailed comments to PMC and DHS about the systemic issues arising from these complaints and have made suggestions for improvement to the job seeker assessment process. We will continue to engage with PMC and DHS about ways to improve these processes.

We suggest job seeker assessment processes in any new model should include:

- mechanisms to ensure comprehensive information about barriers, interpreter need, vulnerability, interventions and employment assessments is regularly recorded and updated
- this information is consolidated and easily accessible for both DHS decision makers and providers
- active support for job seekers to obtain medical evidence for assessments, where they face barriers that prevent them from obtaining the evidence including collaboration between the CDP provider and local Aboriginal medical services to arrange assessments
- more regular training and information for CDP provider staff about the various ESAt referral processes
- collaboration between PMC and DHS to improve the ESAt referral and assessment process
- collaboration between PMC and DHS to better use information obtained from comprehensive compliance assessments about barriers and vulnerability, subject to privacy considerations
- mechanisms to alert providers about the expiry of vulnerability indicators and to ensure providers work proactively with DHS to address the inappropriate expiry/non-renewal of vulnerability indicators.

How many (maximum) hours of required activity would be appropriate in each of the tiers? How should hours be structured (e.g. daily or monthly? Flexibility to schedule outside of business hours)?

Our Office will not comment on the number of hours for each of the three proposed tiers. However, we have received feedback from stakeholders and through outreach that a significant reduction in default hours for the most vulnerable job seekers is appropriate. We also received

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those barriers and consider capacity to work. ESAts are also used by DHS to make decisions about income support payment qualification and activity test or participation requirements. ESAt appointments cannot be booked unless new medical evidence is provided.

[8] Under the current CDP, this means 25 hours a week for 46 weeks of the year.

[9] A vulnerability indicator is a flag DHS attaches to the record of a job seeker who has certain identified vulnerabilities that may impact on their ability to comply with their mutual obligation requirements and may put them at higher risk of non-compliance: DHS Operational Blueprint: Vulnerability Indicators 001-10050000.

feedback that hours should be flexibly structured so people can do some activities on weekends and outside of provider operating hours to accommodate access to a wider range of employment opportunities and cultural obligations. In our view, mutual obligations at all levels should be flexible, individually tailored and take into account the person's circumstances and capacity.

The new model is based on a job seeker only being paid for the hours they turn up when engaging in more 'work-like activities (a 'show pay' system') – will this provide an adequate incentive for a job seeker to engage? What does a more incentives-based model look like? How should a model deal with persistent non-compliance (people who are able but unwilling)?

Incentive-based model

Our Office has no comment on the types of incentives to be offered in any new model. The complaints we investigated and the feedback we received from stakeholders and outreach indicate that for some people, the existing *'show pay'* system (that is *'no show no pay'*) may have resulted in disengagement from the system, calling into question its effectiveness as an incentive. In its recent report on the CDP, the Australian National Audit Office (ANAO) also referred to anecdotal reports of reduced job seeker engagement.[10]

If a *'show pay'* system is implemented, it should be accompanied by clear and accessible guidelines for providers and job seekers about what exemptions/reasonable excuses are acceptable and what supporting evidence job seekers need to show in support.

We consider that in any 'show pay' wages system, there should be rigorous monitoring and safeguards to ensure people in the second and third tiers do not receive less in wages than the maximum income support payment they would be entitled to. A job seeker receiving less in 'show pay' wages should be quickly identified and assessed for any barriers or vulnerabilities and referred to DHS for income support or other assistance.

Model for persistent non-compliance

Our Office has been actively monitoring the penalties under the CDP since its commencement in July 2015 and is concerned about the escalating number of penalties applied to CDP participants. Department of Jobs and Small Business compliance data shows Indigenous job seekers received more penalties than non-Indigenous job seekers, despite representing only a small proportion of overall job seekers.[11]

In our view, penalties should be designed based on the principles of a proportionate and graduated penalty system with adequate safeguards. Our complaint investigations have revealed

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[10] The ANAO referred to a preliminary qualitative evaluation report on two community case studies and an internal PMC analysis paper which showed a decreasing number of activity tested job seekers in the CDP region which was not fully explained by an increase in job placement or movement to non-CDP regions: Australian National Audit Office (ANAO), Design and Implementation of the Community Development Programme, ANAO Report No 14 2017-18, 31 October 2017 at 4.42 https://www.anao.gov.au/sites/g/files/net3721/f/ANAO_Report_2017-2018_14a.pdf, accessed 9 January 2018.

[11] For example, in the quarter April to June 2017, Indigenous job seekers received 57.96% of all financial penalties compared to 42.04% for non-Indigenous job seekers. Indigenous job seekers incurred 64% of non-payment periods compared to 36% for non-Indigenous jobs seekers: Department of Jobs and Small Business, Job seeker compliance data, https://docs.jobs.gov.au/system/files/doc/other/job_seeker_compliance_data_june_quarter_2017.pdf , accessed 9 January 2018. CDP participants represent about 5% of all job seekers: *Social Security Legislation Amendment (Community Development Program) Bill 2015*, Explanatory Memorandum.

persistent non-compliance may be a symptom of underlying job seeker and provider capacity issues. As stated above, a high number of penalties may lead to job seekers disengaging from the system altogether.

For a compliance system to be fair, it should contain safeguards which are effectively administered. These include:

- tools to assess a job seeker's vulnerabilities and any barriers they face in meeting their mutual obligation requirements and finding and keeping paid work. In the current system, these safeguards include comprehensive compliance assessments, the job seeker classification instrument[12], ESAts, job capacity assessments[13] and the application of vulnerability indicators
- reasonable excuse provisions which are fairly and consistently applied to job seekers who may have a valid reason for not complying with their mutual obligations
- access to internal review
- access to interpreters at all stages of the compliance process, where required.

Option 2 – CDP 2

Should we move to the proposed CDP2 model? If no, which aspects of the CDP Bill should and should not be considered in a new model?

Our Office does not express a view on whether the 'CDP2 model' under the former CDP Bill should be adopted. In April 2016, our Office commented on a consultation paper which focused on the penalties scheme and compliance framework for the proposed CDP2 model.[14]

In our previous submission, we agreed with the broad principles that the job seeker compliance framework should be simpler and easier for job seekers and providers. We supported the retention of a flexible range of mutual obligation activities, intended to improve the job seeker's employment prospects and benefit the whole community.

We expressed concerns about:

- CDP providers applying mandatory '*No Show*' penalties based on hourly non- attendance
- penalties being redirected into a Community Investment Fund
- CDP providers having the power to determine reasonable excuses and exemptions and to undertake compliance reviews
- creation of a new internal review framework separate to the DHS internal review framework.

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[12] The Job Seeker Classification Instrument is used to measure a job seeker's relative difficulty in gaining and maintaining employment and to identify those job seekers who have complex or multiple barriers to employment that need further assessment: Department of Jobs and Small Business, https://www.jobs.gov.au/job-seeker-classification-instrument, accessed 9 January 2018.

[13] Used where job seekers have claimed disability support pension.

[14] Commonwealth Ombudsman, Department of Prime Minister and Cabinet Consultation Paper – Changes to the Community Development Program, April 2016; http://www.ombudsman.gov.au/__data/assets/pdf_file/0013/44032/Commonwealth-Ombudsman-CDP-Consultation-Paper-submission-2016.pdf

In our submission, we also commented that essential safeguards for an effective compliance framework should include:

- integration of a robust complaints and feedback process within the compliance framework
- rigorous record keeping by CDP providers to monitor job seeker compliance and record financial penalties
- clear communication to job seekers about the compliance framework, using interpreters if required
- effective monitoring and evaluation of providers by PMC to address poor provider performance and compliance issues, such as poor record keeping, ineffective communication with job seekers, setting of inappropriate activities, inadequate consideration of workplace health and safety and not recording and addressing job seeker vulnerability.

We refer PMC to our previous submission for further details.

Option 3 – CDP with improvements

What aspects of the CDP are working and which parts would benefit from reform? Do the suggested improvements capture the biggest issues with the current model? Are there other short-term/small scale changes which we could make to improve the operation of the CDP?

If the current CDP was to be retained, or at least pending introduction of a waged based model, our Office considers the suggested changes to the current program set out in the Discussion Paper[15] are sound.

As part of our complaint investigations, our Office has provided detailed suggestions to PMC and DHS to address systemic problems in the current CDP. In summary, these include:

- better job seeker assessments, including better provider/DHS referral processes and more proactive assistance to job seekers who have difficulty obtaining medical evidence
- stronger requirements for providers to record and implement Comprehensive Compliance Assessment recommendations
- better collaboration with host organisations and other services to provide more suitable activities
- better collaboration with other support services, such as health, financial counselling and family violence services
- PMC working with DHS to enhance job seeker accessibility to compliance decision makers and safeguards (particularly the DHS Participation Solutions Team line).

Is there merit in staying within a national income support and compliance system?

We have stated in our comments under Option 1[16], that a national system uses existing service delivery expertise and promotes consistent decision making. We have also commented under Option 1, that if any elements of the new model (such as wages and top up payments over and above core social security payments) are moved outside the national income support and

[15] at page 14 of the Discussion Paper
[16] page 4 of this submission

compliance system, the model should include adequate safeguards and protections to ensure more vulnerable job seekers are not disadvantaged.

How can current interactions with the Department of Human Services and/or CDP providers be improved and simplified?

A common theme in our complaint investigations and feedback from outreach was the difficulties job seekers experience accessing the DHS' Participation Solutions Team (PST) line[17]. CDP providers, other service providers and individuals have complained about lengthy PST line wait times (up to several hours), which can result in job seekers missing their mutual obligation activities and disengaging from the social security system. We suggest DHS consider ways to improve access to the PST line as part of any improvements to the current CDP or in the development of a new model.

In our comments under Option 1[18], we suggested a number of improvements to the current job seeker assessment processes and the flow of information between DHS and providers (particularly regarding comprehensive compliance assessment recommendations and findings). This also includes recording when a job seeker needs an interpreter and ensuring both the provider and DHS are aware of that need.[19]

CDP participants we met on outreach also indicated they would like activities which teach them how to engage with government and meet their Centrelink obligations.

[17] When job seekers have their payments suspended due to non-compliance, they are required to contact DHS' PST line to discuss the reasons for their non-compliance and arrange reconnection. DHS advises job seekers in remote locations are given priority through the PST, but the ANAO reports a significant increase in maximum call wait times for both remote and overall wait times from 2014-15 to 2016-17: ANAO, Design and Implementation of the Community Development Programme, ANAO Report No 14 2017-18, 31 October 2017 at 3.31, 3.32, Table 3.4, https://www.anao.gov.au/sites/g/files/net3721/f/ANAO_Report_2017-2018_14a.pdf, accessed 9 January 2018.

[18] pages 5-6 of this submission

[19] In the Office's 2016 report on the Accessibility of Indigenous Language interpreters, we raised concerns about the quality of data captured by agencies and their contractors about the need for, and use of, Indigenous language interpreters. We acknowledge both DHS and PMC have made significant progress in relation to the accessibility and use of Indigenous language interpreters: Commonwealth Ombudsman, *Accessibility of Indigenous Language Interpreters – Talking in language follow up investigation, December 2016,* http://www.ombudsman.gov.au/__data/assets/pdf_file/0028/42598/December-2016-Investigation-into-Indigenous-Language-Interpreters.pdf

Implementation and transition arrangements

What supports do providers, communities and job seekers need to effectively transition to a new approach?

Based on our involvement with the CDP and its predecessor programs, we think effective transition to a new approach will require:

- a clear and accessible avenue for job seekers to make complaints and provide feedback, addressing barriers and discomfort Aboriginal and Torres Strait Islander peoples may experience raising complaints in small, remote communities
- a complaints system that focuses on resolution of the issue for the job seeker
- complaint information that is integrated into improving service delivery as the new model is developed and refined[20]
- providers giving job seekers information about their rights and obligations, in a way which is clear and addresses communication barriers (such as the need for interpreters)
- providers having adequate training, resources, support and internet access to use new information technology systems
- providers having sufficient system access and training to keep detailed and accurate records about job seekers
- providers with adequate leadership, supervision and accessible staff, having a regular presence in remote communities to ensure mutual obligation activities and compliance activities occur regularly
- sufficient mutual obligation activities being available during the transition phase.

How should implementation be staged?

We have received feedback from providers that the CDP and its predecessor, the RJCP, were implemented quickly, without sufficient support and consultation. We suggest any transition should be staged gradually and with proper consultation, using Indigenous language interpreters where required. Retaining a national income support and compliance system at all tiers may reduce disruption during the transition and implementation phase.

[20] Other priority areas for complaint management were identified in our report: Commonwealth Ombudsman, *Complaint management by government agencies: An investigation into the management of complaints by Commonwealth and ACT government, October 2014,* http://www.ombudsman.gov.au/__data/assets/pdf_file/0011/30017/October-2014-Complaint-management-by-government-agencies.pdf