

Submission to the Senate Finance and Public Administration  
Legislation Committee Inquiry into the Social Security  
Legislation Amendment (Community Development Program)  
Bill 2015

JANUARY 2016

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## 1. INTRODUCTION

### 1.1 ABOUT JOBS AUSTRALIA

Jobs Australia is the national peak body for non-profit organisations that assist unemployed people to prepare for and find employment. Jobs Australia helps members to make the most effective use of their resources to promote the need for services and support that will help unemployed people to participate fully in society.

We provide an independent voice for members who range from large charitable organisations to small local community-based agencies. Jobs Australia is the largest network of employment and related service providers in Australia and is funded and owned by its members.

Typically, Jobs Australia members do some or all of the following:

- Deliver services under Commonwealth and/or State Government funded programs, such as jobactive (including Work for the Dole), Disability Employment Services, Community Development Program (formerly the Remote Jobs and Communities Program), Skills for Education and Employment, and similar State Government programs.
- Deliver accredited or non-accredited training for unemployed people as Registered Training Organisations, Group Training Organisations, apprenticeship centres, social enterprises and other non-profit training and education institutions.
- Deliver similar employment and training services to unemployed people without any government funding.

Jobs Australia supports its members by offering support such as industrial relations and human resources advice, tailored insurance products, advice on tenders and funding applications, and policy research and advocacy services.

Jobs Australia also hosts an Indigenous Network, consisting of Indigenous Organisations in urban, remote and regional Australia who deliver services including employment and training services in Indigenous Communities. The network supports member organisations to build their capacity to deliver services which improve employment and educational outcomes.

The Jobs Australia Indigenous Network provides a voice for Indigenous organisations to federal, state and territory governments regarding employment and educational needs of Australian Aboriginal and Torres Strait Islander peoples.

### 1.2 ABOUT THE CDP PROVIDER NETWORK

Jobs Australia was approached by RJCP providers early in 2015 to form a RJCP (now CDP) Provider Network. As its name suggests, it is a network of organisations that deliver CDP. It does not, as yet, have a formal structure. All providers of CDP are eligible to participate in the Provider Network and they do not need to join (or be eligible to join) Jobs Australia.

Jobs Australia has agreed to provide support to the Provider Network for the time being and is doing so from its own resources. That support has included:

- Hosting provider meetings, generally coinciding with meetings hosted by the Department of Prime Minister and Cabinet (PM&C) to discuss proposals and gather providers' views;
- Obtaining legal advice and making the advice available to providers to help them understand their legal position in the event they refused to sign the contract variation that implemented CDP; and
- Collating provider views and conveying them to Government, including through a paper in April 2015, a survey in November 2015 and in meetings and other discussions with the Minister, his staff and officials from PM&C.

### 1.3 ABOUT THIS SUBMISSION

The views expressed in this submission are the views of Jobs Australia. While our views are informed by our consultations with CDP providers, they should not be taken to be the views of any particular provider or group of providers. A list of organisations that have participated in one or more of Jobs Australia's consultations (meetings, surveys, teleconferences, etc) is provided at [Appendix C](#).

## 2. THE REFORMS

### 2.1 GENERAL REMARKS

The reforms in the *Social Security Legislation Amendment (Community Development Programme) Bill 2015* tie in closely with recent changes to remote employment programs. The new Community Development Programme (CDP) contracts include a heavy focus on Work for the Dole.

The historical background to CDP is important and contains many lessons for policy makers. For this reason, we have included a historical timeline in [Appendix A](#).

It is worth making a couple of points about the previous CDEP scheme, given that it has obviously been a source of inspiration for the new CDP scheme. There are some key differences.

These include:

- Under CDEP, participants were paid wages – not welfare, with the consequence that wages had to comply with minimum wage requirements. Under CDP, most participants perform Work for the Dole for 25 hours to receive a welfare payment, which equates to an hourly rate that is significantly less than the minimum wage.
- CDEP was an ‘opt-in’ arrangement that operated as an alternative to welfare. People who opted in had the opportunity to work for real wages, and if they worked additional hours then they received additional pay. If, however, a person could not work or opted out of CDEP for some other reason, they could still access a safety-net payment through the welfare system. This meant that ‘no-show, no-pay’ rules (over which, local providers had significant discretion, and in many cases did not enforce strictly) never left vulnerable people completely without access to the safety-net. In contrast, no-show no-pay in CDP results in removal of the safety-net payment and can leave people without income support. This could put individuals (and any dependent family members) at risk.
- CDEP was explicitly designed to empower communities. Communities, through local community councils, had to choose to implement a CDEP scheme and had the flexibility to tailor the rules that would apply in their community, as well as they types of projects that it would support. Under CDP (and with the measures in this Bill), the program is imposed by Government, the rules are determined by the Minister, and local projects are determined by the Minister, the Department and/or a contracted CDP provider. At best, communities may be consulted. These arrangements do not empower communities.

It is also worth noting that, to date, there has been no formal consultation on any aspect of the CDP arrangements. To the extent that consultation has occurred, it has been limited to discussions with some individual communities and individual CDP providers. Of the 31 provider staff who dialled in to Jobs Australia’s teleconference consultation on the Bill, none had been consulted on any aspect of this Bill before it was introduced in December, nor were they aware of any such consultation having taken place.

### 2.2 THE LEGISLATION

The *Social Security Legislation Amendment (Community Development Programme) Bill 2015* must be considered on the basis of the text in the Bill itself. Other information, such as material in the Explanatory Memorandum (EM) and the Minister’s Second Reading speech that indicates what Government intends to implement via legislative instruments and/or contract variations, provide useful context but are not part of the proposed legislation.

The key measures contained in the Bill are:

1. Establishment of remote income support payments and weekly pay (with responsibility for paying income support transferred to CDP providers);

2. Delegation of legislative power to the Minister to determine job seeker compliance arrangements for the remote income support payments; and
3. Establishment of new tapering arrangements for remote income support payments.

Jobs Australia is opposed to this Bill and recommends that it not be supported, for the reasons outlined below.

### 2.2.1 CONCERNS FOR VULNERABLE JOB SEEKERS

The Bill would transfer responsibility for paying some welfare payments (those with participation requirements) from DHS to CDP providers (s1061ZAAX). The current program requires providers to engage job seekers in 25 hours per week of Work for the Dole, with a payment model and performance framework that provides strong incentives for providers to penalise job seekers who do not attend.

It must be remembered that benefit sanctions can result in severe financial hardship for individuals and their families. Penalties can and frequently do prompt job seekers to re-engage, but they can also result in disengagement – that is, people deciding that it is just too hard to comply and seeking instead to seek support from friends and family, or supporting themselves through other means. Survey data from late last year confirms that some people are exiting from CDP without having found employment – at this stage, we do not have any data on how those people are supporting themselves (CDP Provider survey 2015).

The CDP Guidelines, which are part of the CDP contract, encourage sanctions by explicitly linking compliance action to payments. The bulk of provider revenue comes from Work for the Dole payments. These are only paid where job seekers attend Work for the Dole, or where the job seeker does not attend if (i) the job seeker has a valid reason and gave prior notice; or (ii) the provider “took all reasonable action in relation to non-attendance (including submitting a Participation Report to DHS) and following this action were able to re-engage the job seeker back into Work for the Dole activities within 14 days”.

The performance targets in the contract also include measures relating to sanctions. The target is for “100% of Provider Attendance Reports and Non-Attendance Reports [to be] submitted to DHS within 2 business days of non-attendance”.

The new Community Investment Fund, mentioned in the EM but not included in the Bill itself, may also mean that providers can access additional funding for projects from benefit savings generated by sanctions. Details have not been provided but from the reference in the EM, it seems that the more sanctions providers impose, the more funding they will be able to access via this new fund.

In effect, the arrangements in combination encourage providers to use financial penalties to engage job seekers, rather than other, more positive engagement strategies. Providers are faced with a choice between engagement strategies that they might feel are good for engaging the client, and those that will increase their revenue and performance ratings. As a result, they are not well placed to make impartial decisions about individual access to safety net payments under social security law.

That is not to say that the current processes could not be improved. Under current arrangements, providers report non-attendance and DHS determines whether a financial penalty is appropriate. In the case of repeated failures, a Comprehensive Compliance Assessment (CCA) is undertaken and DHS considers the imposition of an 8 week suspension. In making that decision, DHS weigh up the adverse impact of the penalty on the job seeker and consider whether there are additional, underlying issues (such as mental illness, substance abuse, domestic violence or other issues) affecting the job seeker’s ability to comply. The public servants who make these decisions are impartial.

Providers have reported that this process takes too long and the delay results in job seekers disengaging. There are also some frustrations at the number of penalties that are not applied by DHS and apparent inconsistencies in which are applied and which are rejected.

A [recent report prepared for Jobs Australia](#) found, however, that DHS reject fewer penalties in remote areas than in non-remote areas (Fowkes and Sanders 2016). There can be good reasons for DHS to reject penalties – it may be, for example, that CDP providers have not recorded sufficient information in the IT system for DHS to verify that the penalty would be consistent with social security law.

Indeed, it was recently announced that DHS will trial a new process in an effort to reduce the number of penalties it rejects. Rather than simply reject a penalty, DHS will now inform CDP providers when information in the IT system is deficient and give providers an opportunity to correct the information. According to the notice of the trial, “many of these rejections are due to insufficient evidence of formal notification being included in the report” (CDP Provider Portal News item, 23/12/2015).

This is a good example of a sensible measure that should help to alleviate the providers’ concerns.

The solution proposed by the Bill, however, goes much farther than is necessary. Rather than tackle specific issues with the compliance framework, the Bill seeks to give the Minister authority to re-write social security law and ensure that penalties are applied more quickly and with less checks and safeguards.

Under the arrangements proposed in the Bill, such decisions would be made by staff in CDP providers, who are not free to apply their discretion and who have contractual incentives that push them to apply financial penalties. Individual circumstances, vulnerabilities and barriers are less likely to be appropriately taken into account.

A further complication is the fact that providers often source their staff from the local community. That means that the people charged with responsibility for making decisions about benefit payments will also have relationships with people in the community – they will be responsible for deciding whether to apply sanctions to people who are their neighbours, friends, and family members. In situations where the job seeker is known to the staff member, it is almost impossible for decisions to be made with the same kind of impartial assessment that would be undertaken by a stranger in DHS.

Notably, the payment of welfare by CDP providers is significantly different to the payment of CDEP wages under the previous CDEP program. In CDEP, the program effectively operated on an ‘opt-in’ basis as an alternative to welfare. Those who did not participate in CDEP were still eligible for welfare benefits (with the usual requirements to participate in mainstream programs such as the Job Network / Job Services Australia). This reduced some of the risks described above because the welfare safety-net remained in place.

It is also worth noting that another Bill that is currently before the Parliament also seeks to make changes to the compliance framework. The *Social Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill*, if it is passed, will mean that job seekers who fail to meet their obligations will have payments suspended immediately and, if they do not have a reasonable excuse, they will not receive back-pay. That legislation would achieve at least some of the aims of this Bill, but would keep formal decision-making responsibilities with DHS, would retain important safeguards for vulnerable job seekers and would apply universally, not just to a sub-set of the job seeker population. Jobs Australia has supported most of the measures in that Bill and recommended that all but one measure be supported. Our submission to the Senate Education and Employment Legislation Committee in that Bill is available on the [Committee’s website](#).

### 2.2.2 PRACTICAL CONCERNS FOR CDP PROVIDERS

Our consultations with CDP providers have revealed a series of practical concerns about the implementation of the measures in the Bill and the implications for providers’ operations.

Firstly, many providers are concerned about increased staff safety risks arising from the changes to payment arrangements. By making CDP providers solely responsible for financial penalties applied to remote income support payments, provider staff are placed at increased risk of harm in confrontations with job seekers. Currently, providers are able to explain that they merely report attendance or non-attendance and can refer job seekers to DHS if they are unhappy with a decision. DHS compliance staff do not live in the community and have conversations with job seekers via phone. The changes in the Bill would mean that providers would no

longer be able to redirect aggression toward DHS staff, and provider staff who live locally in the community will be susceptible to being confronted not only in the workplace, but also outside of work.

Feedback from CDP providers has confirmed that this is a real concern. One staff member for a CDP provider made the point that “a lot of my jobseekers know my car and where I live”.

Again, this concern was mitigated in the previous CDEP program because the decisions made by providers concerned the payment of wages, and not the payment of welfare. CDEP was an alternative to welfare and people who did not opt-in to CDEP activities could still receive income support through the welfare system, with the usual participation requirements.

Secondly, providers are concerned that their new decision-making role will result in providers becoming party to social security appeals. If a job seeker wants to appeal a decision of a CDP provider, they will be able to seek a review by the Department of Prime Minister and Cabinet, but may also make an appeal to an external tribunal such as the Administrative Appeals Tribunal or to the courts. Currently, DHS is responsible for the decisions and it is DHS and its legal representatives who would prepare evidence and appear before the external tribunal. If CDP providers are responsible for decisions, then the CDP providers may be required to give evidence, or may even be a party to proceedings – which would inevitably incur costs for providers and divert attention and resources from their primary tasks building employment and community development opportunities through the CDP contract.

A third concern is that the administrative costs associated with the additional work expected of CDP providers will not be fully compensated by the Department. Providers are already concerned about the financial viability of the CDP contract, and the additional costs associated with administering payments (and, perhaps, defending legal challenges from job seekers) will be a significant impost. Providers’ existing payroll systems are not set up for welfare payments and new IT systems will likely be required. There may also need to be special arrangements to make welfare payments to people who are being income managed. Inevitably, the new arrangements will require new systems and additional staff training in the new systems as well as in the new legislation and regulations (when they are revealed). There will be ongoing administration costs associated with job seekers who move between regions and, therefore, on and off a provider’s caseload.

Fourthly, given that key details of the arrangements are still yet to be determined, the 1 July 2016 start date is likely to leave little time for providers to set up new systems, train staff and prepare.

### 2.2.3 NEW ARRANGEMENTS MAY CAUSE CONFUSION

The arrangements increase the scope for confusion. Under the measures in the Bill, people receiving a payment with participation requirements will fall under the remote income support arrangements administered in part by DHS but paid out by CDP providers. Those who do not have participation requirements, however, will continue to have payments paid fortnightly and administered exclusively by DHS.

People receiving the new remote income support payments will have some aspects of their welfare payment administered by a CDP provider and some administered by DHS. With respect to the main benefit (such as the base Newstart payment) DHS will remain responsible for eligibility requirements, which includes eligibility under the new income test. That means that CDP participants will continue to apply for benefits through DHS, and DHS will administer the Job Seeker Classification Instrument as well as Job Capacity Assessments and Employment Services Assessments, where required. It also appears as though DHS will remain responsible for paying supplements such as Rent Assistance and Family Tax Benefit – even for people who are paid their primary benefit via a CDP provider. If this is correct, then those subject to the measures in this Bill will be paid part of their welfare payment by the provider on a weekly basis, and part of their welfare payment fortnightly by DHS.

CDP participants will also need to report their income earned from any paid employment to DHS, while their Work for the Dole hours will need to be reported to or monitored by the CDP provider. DHS will apply the



income test to determine how much a person is eligible to be paid, and the CDP provider will apply a participation test and pay one 25<sup>th</sup> of the person's benefit for each hour of Work for the Dole completed.

This two-step process contrasts with the much simpler arrangements in CDEP where participants were paid CDEP wages by the provider and had no relationship with DHS unless they opted out of CDEP.

Secondly, the fact that some people in the community will remain on payments that are administered exclusively by DHS will mean that some people are paid under the remote income support system and some will be paid under the current system. Conceivably people in the same family could be paid under the different systems – for example, a couple might include one person on a participation payment, such as Newstart, and the other person on a payment without participation requirements, such as Disability Support Pension (with an assessed work capacity of less than 15 hours). Under the arrangements in the Bill, the person on Newstart would be paid weekly by their CDP provider, and the other person would continue to be paid fortnightly by DHS. The first person would be subject to new rules under the Bill (details of which are largely yet to be revealed), while the second would be subject to existing rules. For instance, it is not clear how income earned by the person on Newstart would be treated for the purposes of the income test for their partner.

Far from simplifying matters, these changes make the arrangements in remote areas much more complicated and there is clearly the potential for these arrangements to cause confusion in communities.

#### 2.2.4 MOST OF THE DETAILS ARE NOT IN THE BILL

The Bill delegates significant new regulation-making powers to the Minister for Indigenous Affairs and the Secretary of the Department of Prime Minister and Cabinet. Key aspects of the arrangements are simply not in the Bill. These include:

- Where it is to apply: the Minister is empowered to declare remote income support regions and must take certain factors into account, but there is otherwise no limit on the range of locations the Minister could consider remote. Unlike the former CDEP scheme, in which communities opted in, the Minister could make the decision with minimal local consultation and without the consent of the community.
- What obligations / requirements and what compliance / enforcement measures apply to remote income support payments: including everything from activity requirements, to what might constitute a 'reasonable excuse', to the appeal processes that will apply. Notably, the Bill lists matters that the determination "may deal with" but the list is expressed "without limiting" the range of matters that the Minister may include. These are substantive issues that are generally dealt with in the primary legislation.
- Anything and everything in social security law: section 1061ZAAZC delegates power for the Minister to "determine that the social security law (including this Part) has effect, in relation to remote income support payments to remote income support participants, with any modifications that are prescribed". That means the Minister could change literally anything without prior approval from the Parliament.

Legislative instruments are, of course, disallowable, but that is a lesser level of Parliamentary scrutiny than that which applies to legislation. The process takes time and the legislative instruments take effect from the time they are registered, which means they can be in place for months before they are considered by the Parliament.

Providing welfare payments to people in need of support is a core responsibility of the Federal Government, and to delegate this much authority over social security law to one Minister would be a fundamental abrogation of the Parliament's responsibility to hold the Government to account – a responsibility that is particularly important when individuals' human rights are affected.

#### 2.2.5 NEW TAPER RATES MAY HAVE UNINTENDED CONSEQUENCES

The picture with the new taper rates is somewhat unclear. The Bill raises the income threshold to \$650 per week, roughly in line with the minimum wage, but other information in the Explanatory Memorandum and in the Minister’s Second Reading speech suggest that payments will taper for each hour of Work for the Dole not completed. The Minister’s speech, for example, says that the new arrangements (once they are declared in regulations) will “allow providers to reduce an hour’s payment for an hour’s non-attendance” up to a “maximum daily penalty equivalent to a day’s remote income support payment”.

This makes the situation quite complicated. Whether or not a CDP participant is better off under these arrangements depends on the specific circumstances. If a participant (on Newstart Allowance, single rate with one child / dependent) is offered 3 hours of work per fortnight at a local business (paying minimum wage with the casual loading) and attends the employment instead of completing their Work for the Dole activity for that day, then the sums currently look like this:

**Current arrangements:**

Paid work:	3 hours @ \$17.29 per hour + 25% casual loading	\$64.84
Application of taper rate:	Payment tapered if participant earns more than \$102 in a fortnight	\$0
Deduction for missed WfD hours:	NSA suspended until participant re-engages, then participant receives backpay	\$0
Total ‘top up’ from work:		\$64.84

Under the new arrangements, however, the sums will look like this:

**New arrangements:**

Paid work:	3 hours @ \$17.29 per hour + 25% casual loading =	\$64.84
Application of taper rate:	Payment tapered if earnings exceed \$650 per week	\$0
Deduction for missed WfD hours:	5 hours @ 1/25th of NSA (\$283.15 pw) =	-\$56.63
Total ‘top up’ from work:		\$8.21

(Sources: Fair Work Australia, Department of Human Services)

On the other hand, the new taper rates can mean some people will be significantly better off. For example, an Indigenous artist (no dependents) might currently earn a living by selling artworks for a modest income of around \$600 per week. Under current rules, this person would not be eligible for Newstart. Under the proposed new rules, the person could continue to earn \$600 from their artworks and also receive a remote income support (Newstart) payment of \$261.70 per week, plus rent assistance of up to \$64.70 – provided, of course, that they participate in Work for the Dole for 5 hours per day and do their artworks outside of those hours.

Obviously there will be a range of scenarios in between these two extremes. The question is not so much whether people are better off or worse off in each scenario, but what the effect might be on behaviour. The new rules will create new incentives, and they could result in perverse behavioural responses. For example, in response to the outcomes illustrated above:

- People may move between remote and non-remote regions to take advantage of the rules that provide them with the greatest benefit. This can be as simple as moving from a town camp on the fringes of Alice Springs (remote) to an address within Alice Springs (non-remote), or vice-versa.

- CDP participants might decline offers of small amounts of paid work that clash with the hours of their Work for the Dole activities, preferring to receive a reliable income doing a Work for the Dole activity they enjoy rather than paid work which is less enjoyable and less reliable.
- People might elect to avoid engagement with the system and rely on family and small amounts of casual work – which might leave them worse off overall, and unable to access opportunities (like training and wage assistance) available through CDP.

Behavioural responses are always difficult to predict because they do not always follow the financial incentives – in other words, people sometimes behave in ways that traditional economic models would consider ‘irrational’. We cannot be sure what will happen. But, given the magnitude of change that the Minister and his Department intend to implement with their new delegated regulation-making powers in this Bill, the chances of some unintended consequences are high.

### 2.2.6 NEW TAPER RATES WILL REQUIRE ADJUSTMENTS TO CDP CONTRACTS AND OTHER PROGRAMS

Another issue is that the new taper rates will affect outcome definitions and performance measures in CDP contracts. Currently, CDP providers are eligible for outcome payments when they place a job seeker in employment that generates sufficient income to reduce their welfare payment to zero (ie: in a job that gets them off benefits). Performance measures are similarly defined. Other payments, such as wage subsidies to employers, are also defined with reference to reductions in a job seeker’s benefit payments.

Under the new taper rates in the Bill, it will be significantly harder to achieve the payment and performance triggers that are defined with reference to benefit reductions, simply because it will take a lot more income to reduce a person’s benefits. For example, given that payments will no longer even start to be reduced until earnings exceed the minimum wage, a full-time job at the minimum wage will not be sufficient to achieve an outcome.

No information has been provided as to how this issue might be addressed. One possibility may be to set targets and outcome definitions with reference to hours of work but this again raises issues – for example, it could mean that providers are rewarded in situations where the job seeker continues to receive income support payments. In short, a solution is not readily apparent.

### 2.2.7 DISCRIMINATION CONCERNS

Fundamentally, the Bill establishes a separate system for some welfare payments that are paid in remote Australia with arrangements that most likely discriminate against Indigenous people.

The Statement of Compatibility with Human Rights (SCHR) in the EM suggests that the Bill is not discriminatory because (i) it applies to all people in remote areas, and not people of a particular race; and (ii) the new measures “will be beneficial” because they provide “a simplified compliance framework and penalties that are easier to understand” (p5). These claims are easily refuted.

Firstly, while the text of the Bill does not explicitly target Indigenous people, there is a clear connection between a particular race and the areas in which the measures in the Bill will apply. The overwhelming majority of unemployed people in remote areas are Indigenous: of the 37,000 unemployed people in the regions that are currently considered remote, 31,000 (or 84%) are Indigenous (Gooda 2015). Besides, if the legislation was not targeted to Indigenous people, then the Minister for Indigenous Affairs would not be the responsible Minister.

On the second point, the measures in the Bill are not an example of positive discrimination as the SCHR attempts to suggest. The ‘benefit’ of the new legislation is supposedly a simplified compliance framework, but the new compliance framework is not part of the Bill. The Bill simply includes a delegation to the Minister for

Indigenous Affairs to establish whatever compliance arrangements that Minister sees fit (s1061ZAAZA). The Minister (and if not the current Minister, then a future Minister) might choose to use the powers conferred by the Bill to implement a harsher compliance regime for remote communities than exists in non-remote areas.

Indeed, many features of the Bill could already be considered harsher than the arrangements in non-remote areas. For example, transferring responsibility for administering welfare payments to CDP providers is likely to result in more financial penalties being applied more often, without the scrutiny of the Department of Human Services to safeguard against inappropriate sanctions being applied to vulnerable people. The SCHR suggests the measures are beneficial because they “aim to strengthen existing incentives for remote job seekers to actively engage with a range of mutual obligations” (p5). The ‘incentives’ referred to here are financial penalties – reductions in welfare payments administered as punishment for failure to comply with program requirements, which encourage people to comply because they experience severe financial hardship if they do not. For those who experience such penalties, they are clearly not a benefit.

The real situation is that the new CDP contract imposes greater mutual obligation requirements on remote job seekers than currently apply to non-remote job seekers; more onerous obligations mean it is easier for remote job seekers to fail the requirements; that, in turn, increases the likelihood and frequency of financial penalties; and the measures in this Bill remove safeguards and protections that non-remote job seekers enjoy. Given that the vast majority of the target group are of one particular race, the arrangements are likely to be discriminatory.

### 2.3 RECOMMENDATIONS

Jobs Australia recommends that the Bill not be supported.

The Community Development Programme contract has only been in place for six months, and it will take some time to understand the full impact of those changes.

A more appropriate response to any concerns about the Job Seeker Compliance framework would be to establish an advisory committee, with representation from the CDP providers and other stakeholders, to devise more considered and more appropriate responses to the various implementation issues that arise.

In the event that the Bill receives the support of the Parliament, we recommend that the details that the Bill leaves to the Minister and his Department be finalised in genuine consultation with providers. Providers should have some say in whether they take on the additional responsibilities associated with distributing welfare payments and on what terms, and arrangements should not proceed without the explicit approval of local communities. Data should be made available so that the effectiveness of the measures can be properly evaluated before they are fully rolled out.

## 3. APPENDIX A:

### 3.1 HISTORICAL TIMELINE OF CDEP EUROPEAN SETTLEMENT

While the CDEP story starts in the 1970s, it is worth mentioning at the outset the historical conditions that provided the impetus for the CDEP scheme.

An appropriate place to begin is at the time of European colonisation, which disrupted the Aboriginal economy that had previously existed. As a key report explained (Miller 1985):

*“Prior to the European settlement of Australia, the working life of Aboriginal society was already highly organised and structured. Hunting and gathering, manufacture of tools and weapons and other artefacts required a knowledge of the country and its resources, as well as a definite set of skills. There was also a clear division of labour between men and women and a complex, kinship based, system of services established. No-one was exempt from work and everybody made some contribution to the material and social livelihood of the community.*

*European colonisation in many areas brought about the rapid removal of the means of production. The introduction of animals and crops and the destruction of forests and plains occurred in order to accommodate agricultural and (eventually) industrial needs. This severely restricted the Aboriginal mode of hunter-gatherer existence and forced Aboriginal people to become increasingly dependent on the introduced economic structure. In the more remote areas that were not settled by Europeans to the same extent, a mixture of attraction, dependence and force resulted in similar situations arising, although the primary factors of production, particularly land, were less alienated than in the areas that were more densely settled by Europeans.” (Miller 1985, p27)*

Thus the economy and society in remote Australia changed rapidly with the advent of European settlement. Following that disruption, opportunities for Indigenous people to participate in the economy were more limited. Some Aboriginal people found employment in rural industries such as farming and fishing or in domestic services, but participation in the new economy established by the settlers generally involved low-skill jobs performed for little or no wages and “[t]he prime feature in this new relationship was that it resulted from removal of Aboriginal control of the resources of the land”. (Miller 1985, pp27-28).

#### ORIGINS OF CDEP: 1960s AND 1970s

By the 1960s, Aboriginal workers in the pastoral industry were earning wages, but they were still paid less than non-Indigenous labour and below the minimum award rates (Sanders, 2004; Miller 1985, p28). In 1965, the industrial umpire ruled that Indigenous workers in the pastoral industry were covered by the *Cattle Station Industry (Northern Territory) Award 1951* (DoFD 2009), with the effect that they had to be paid award wages. The decision led to widespread unemployment (DoFD 2009) and the inclusion of ‘Aboriginal natives’ in the Social Security Act (Dockery and Milsom 2007, p15).

Even so, remote Indigenous people were not immediately assessed as eligible for unemployment benefits. The thinking that prevailed into the 1970s was that “Aboriginal applicants from remote areas do not qualify for unemployment benefits because they do not have a ‘work history’, and so are not so much unemployed as outside of the workforce, both geographically and categorically” (Sanders 2004, p1). That argument was spurious, given that some Indigenous people obviously did have a history of having worked, and the actual test for eligibility only really required that a person be available and willing to work (Sanders 2004, p1). As such, officials began “slowly realising that they can not keep Indigenous applicants from remote areas off unemployment benefits for much longer, without being accused of either discrimination or flouting their own rules” (Sanders 2004, p1).

The solution identified in 1976 was the “creation of useful employment against which a realistic application of the “work test” can be applied to Aboriginal applicants for unemployment benefit” (Interdepartmental

Working Party on Aboriginal Employment 1976, cited in Sanders 2004). One suggestion from an Indigenous community was that welfare payments be pooled and handed to the local community council, so that they could then pay people to work on community projects. This idea was the original basis for CDEP (Sanders 2004) and the pilot in 1977.

### EXPANSION OF CDEP: 1980s

By 1981 it was estimated that 70% of total Indigenous income came from welfare, even when the imputed value of non-traded economic production (such as hunting) was factored in (Fisk 1985, cited in Miller 1985). Other figures cited in the Miller Report suggest that in 1983, 90% of cash in remote economies came from welfare (Miller 1985, p34) and the report's discussion of various unemployment statistics concludes that "[t]hree-quarters of the Aboriginal male population aged 15 years or more and nearly 90 per cent of Aboriginal female working age population in remote areas were not in regular employment in 1983".

The Miller report emphasised the importance of communities having independence in their decision-making and saw CDEP was a program that embodied the principle of self-determination and provided the flexibility to support traditional economic activity (Dockery and Milsom 2007, pp16-17).

The CDEP program had expanded and by 1984-85 was operating in around 30 communities with 2,900 participants receiving CDEP wages in place of an unemployment benefit, and supporting a further 2,700 dependants (note that, at the time, married women were not entitled to a benefit if their husband worked). The guidelines for CDEP had become well established. They included requirements that (Miller 1985, pp118-119):

- Key decisions were made by locals through a local community council, which "determines the work to be done under the CDEP, the persons to be offered work, the hours they work per week, and the payment for that work, whether by job contract, co-operative effort or an hourly rate";
- Hourly rates were "related to an award wage that may apply";
- Work undertaken had to be "meaningful to the community" or improve "the general well-being of its members";
- Total wages allocated were to be equal to the total value of unemployment benefits that would otherwise have been payable to participants, plus an additional component (up to 20%) for on-costs such as workers compensation, insurance, payroll tax, materials, tools and administration; and
- Those who worked in CDEP were regarded as employed and not eligible for unemployment benefits.

In contrast to the positive remarks about CDEP, the Miller report was critical of other labour market assistance programs that were targeted to Indigenous people for having an "underlying implication" that "Aboriginal people would or should integrate in some manner into the mainstream Australian economy"; which "seriously failed to take account of the fact that a significant proportion of the Aboriginal population do not wish to leave those remote and rural areas in which they live"; along with "a failure to include significant Aboriginal involvement in the decision-making process" (Miller 1985, p182).

Following the Miller report's recommendations, the Federal Government expanded CDEP (Dockery and Milsom 2007, p17).

### PROBLEMS EMERGE: 1990s

The CDEP program was always an employment program, but it always sat somewhat awkwardly across welfare and employment policy (Sanders 1997, p8). That became more problematic in the 1990s as other reforms to the welfare system more broadly, as well as industrial reforms such as the introduction of compulsory superannuation, began to prompt questions about the program.

Specifically, issues raised included:

- Substitution effect on State / Territory / Local Government expenditure – for example, when CDEP workers built or maintained infrastructure that was the responsibility of another level of government (Sanders 1997, p7);
- Whether it was appropriate that CDEP wages, while treated and taxed as ordinary wages, were exempt from superannuation (Sanders 1997, p7);
- Whether the different treatment for CDEP participants compared to ordinary welfare recipients was discriminatory – for example, because CDEP participants were not eligible for supplements such as rent assistance (Sanders 1997, p7; Sanders 2004, p5);
- That the ‘no work, no pay’ rule was being applied inconsistently, with up to a third of those receiving CDEP wages not actually working (Dockery and Milsom 2007, p19);
- A lack of hard data on quantitative measures of the program’s success (Altman 2008, p13); and
- Concern that the objectives of the program were confused and not sufficiently focused on (unsubsidised) employment outcomes (Dockery and Milsom 2007, p20).

At the same time, mainstream welfare to work policies were also being reformed. CDEP, for those who chose to participate, was always premised on a principle of no-show, no-pay. Increasingly through the 1990s the mainstream programs adopted similar conditionality, culminating in the late 1990s with the introduction of Work for the Dole (Dockery and Milsom 2007, p19). The other key development in mainstream programs was the privatisation of the Commonwealth Employment Service, which was initially tested in 1994 with some limited outsourced case management services as part of the *Working Nation* package; then with full privatisation in 1998 with the introduction of the *Job Network* (Dockery and Milsom 2007, p17).

This meant that by the late 1990s the context for the program had changed significantly – rather than operating as an alternative to passive welfare, it was an alternative to a more activation-focused welfare system that applied relatively indiscriminately. Moreover, the success of the Job Network was measured in hard, quantifiable outcomes. It is easy to see why pressure mounted to bring CDEP into the mainstream program framework.

Responsibility for CDEP through the 1990s was with the Aboriginal and Torres Strait Islander Commission (ATSIC), a statutory body created by the Hawke Government in the Indigenous Affairs portfolio (Sanders 2004, p5). ATSIC viewed the program’s objectives as being broader than just employment outcomes and resisted pressure to reorient the program. Under ATSIC’s stewardship, CDEP continued to grow and by the end of the decade, around 30,000 Indigenous people were participating in CDEP (Sanders 2004, p4).

### FALLING OUT OF FAVOUR: 2000s

More concerns about CDEP emerged in the 2000’s, including a concern that it may act as a poverty trap, offered too little pay, only offered unskilled work that was unlikely to build skills or lead to qualifications that outside employers sought, and might even encourage young people to leave school without completing (Dockery and Milsom 2007, p24).

In 2004 ATSIC was disbanded and responsibility for CDEP was moved into the Department of Employment and Workplace Relations (DEWR), the same department that had responsibility for overseeing the Job Network (Altman 2008, p13). Under DEWR’s stewardship, the program started to be wound back: in 2007 CDEP was ceased in 60 areas that were regarded as having strong labour markets; later that year a further 30 CDEP programs were closed as part of the Northern Territory Emergency Response (Jordan 2011, p14). The latter closures were partly motivated by the fact that, as CDEP participants were paid wages and not paid a benefit, their income could not be subject to income quarantining, which was part of the suite of emergency interventions (Altman 2008, p14). Effectively, the Government was “restricting CDEP back to the remote geographic areas in which it had started 30 years before” (Sanders 2012, p383).

A change of Federal Government in 2007 resulted in the reinstatement of CDEP in these communities, though with fewer places (Jordan 2011, p15). The reprieve for CDEP was brief, however, and in 2009 the Federal Government announced that it would close CDEP in areas with established economies, and in other locations, new participants would no longer receive CDEP wages but would instead receive welfare payments (Jordan 2012, pp10-11). Effectively, new participants from that time could undertake CDEP to meet their mutual obligation requirements, but – unlike CDEP wages, which could be ‘topped up’ with up to \$5,000 of additional income without affecting the base payment - any additional hours worked had to be reported to Centrelink as income and the usual taper rate was applied (Jordan 2012, p11).

### THE SHORT LIFE OF RJCP:

By February 2011, numbers had dwindled to just under 10,500, 55% of whom were still receiving CDEP wages and the other 45% received welfare (Senate Community Affairs Legislation Committee 2011, cited in Jordan 2012, p11). At this point, CDEP was still operating in conjunction with the mainstream employment services programs, such as *Job Services Australia* which had replaced the *Job Network* in 2009 (DEEWR 2010, p150).

In 2011 the Federal Government also announced that it would review remote employment services with an extensive consultation and policy development process that included:

- A Remote Participation and Employment Services Engagement Panel to oversee consultations (Ellis and Arbib 2011);
- A discussion paper process (Ellis and Arbib 2011); and
- More than 90 information and consultation sessions (Macklin et al 2012)

The outcome of the review was that all existing employment programs would be rolled together into a new program, the *Remote Jobs and Communities Program* (RJCP), which would operate in 60 remote regions across Australia from 1 July 2013 (Macklin et al 2012). Around 5,000 remaining CDEP participants who were still receiving CDEP wages would continue to do so with an extended adjustment period – essentially, they would be ‘grandfathered’ and the CDEP scheme would effectively end in June 2013 (Sanders 2012, p385).

The design of RJCP had more in common with *Job Services Australia* than with CDEP. The program included similar processes for assessing clients, conducting regular appointments, and monitoring participation plans. The key differences with RJCP were (i) providers had to develop Community Action Plans (focused on economic / community development) in consultation with local communities; (ii) additional funding (\$60 million per year) through the Community Development Fund, which could be applied to projects; and (iii) a single provider was contracted for each region, in contrast to the approach in *Job Services Australia* whereby multiple providers compete with each other within each region (Fowkes and Sanders 2015, p2). It was hoped that this would foster “[p]lace-based innovative solutions” rather than just a “combination of current services” (DEEWR 2012).

Notably, a number of local organisations were approached by Government after the close of the commissioning process and asked to partner with other organisations (such as large *Job Services Australia* providers) for the delivery of RJCP. These organisations felt that they had to enter these partnerships or they would not be given the contract (Fowkes and Sanders 2015, pp4-5). This perhaps reflected a lack of confidence in the capacity of former CDEP providers to adjust their operations to the new contracts.

Ultimately, when RJCP began on 1 July 2013, the providers did in fact have some difficulties adapting to the new program. Many providers felt they did not have enough notice of winning the contract; others cited issues with IT, training staff in the new systems and program requirements, and other practicalities such as finding adequate housing for staff and high staff turnover (Fowkes and Sanders 2015).

In October 2013, shortly after the Federal Election, the new Minister for Indigenous Affairs declared that RJCP was “a complete disaster”, with people who had previously been participating in CDEP or Work for the Dole projects now disengaged (Karvelas 2013). The *Forrest Review of Indigenous Training and Employment* also



commenced around that time, with its report due in October 2014; that review made a series of recommendations relevant to RJCP and the grandfathered CDEP participants (Forrest 2014).

The Forrest Review's recommendations included:

- The abolition of remaining CDEP wages, because "CDEP activities are not real jobs and individuals should be encouraged to aspire to something more than a welfare activity" (Forrest 2014, p134); and
- The replacement of RJCP providers with a network of "demand-driven Job Centres ... where training and support are provided to get people into guaranteed jobs" (Forrest 2014, p203).

While the Forrest Review noted that "[f]ull-time Work for the Dole activities from day one will keep people active" (Forrest 2014, p197), it also recommended that the new arrangements be rolled out only when local communities opted-in (Forrest 2014, p202).

In December 2014, the Minister for Indigenous Affairs announced that RJCP would be reformed, with changes rolled out from 1 July 2015 (Scullion 2014). It was clear then that the RJCP contract, which was meant to run through to 2018, would be in for significant change – though it was not yet clear whether that change would follow the model advanced by the Forrest Review or some other model.

## INTRODUCTION OF CDP

The Minister's December 2014 announcement committed to "discussing the new programme with communities on a community-by-community basis right up to and beyond its introduction in June 2015, to ensure Work for the Dole activities meet the needs of individual communities" (Scullion 2014). Despite that commitment, providers did not receive details about the proposed changes to RJCP contracts until the end of March 2015, when the Department of Prime Minister and Cabinet presented a full set of contract variations, intended to take effect in just three months' time, at a meeting in Alice Springs (Jobs Australia 2015). The variations effectively replaced the RJCP contract with what we now know as the *Community Development Program* (CDP) – including all of the key terms, such as the required services and the prices the providers would be paid for them.

Despite the many lessons that the CDEP history provides for policy-makers, many of the concerns that were raised in relation to CDEP can also be applied to the new CDP arrangements.

## 4. APPENDIX B:

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#### Appendix A: Historical Timeline of CDEP

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## 5. APPENDIX C:

### 5.1 LIST OF ORGANISATIONS THAT HAVE CONTRIBUTED TO JOBS AUSTRALIA'S CDP PROVIDER NETWORK AND / OR CONSULTATIONS

Note: most (but not all) of these organisations are current CDP providers. This list includes organisations that have attended forums and meetings or participated in teleconferences hosted by Jobs Australia between March 2015 and January 2016.

Anangu Jobs	Murdi Paaki Regional Enterprise Corporation Ltd
Ashburton Aboriginal Corporation	Marra Worra Worra Aboriginal Corporation
Batchelor Institute of Indigenous Tertiary Education	My Pathway
Bynoe Community Advancement Co-Op Society Ltd	National Joblink
Campbell Page	Ngurratjuta-Pmara Ntjarra Aboriginal Corporation
Cape York Employment	Palm Island Community Company Ltd
CatholicCare NT	RAPAD Employment Services
Central Desert Shire Council	Right Hand Remote Solutions
Centre for Appropriate Technology Ltd	Roper Gulf Shire Council
Complete Personnel S.A. Pty Ltd	Salvation Army Employment Plus
East Kimberley Job Pathways Pty Ltd	SkillCentred Queensland Inc
Gulf Savannah NT	Tangentyere Council Incorporated
Ironbark Aboriginal Corporation	Thamarrurr Development Corporation Ltd
IS Australia	Tiwi Islands Training & Employment Board
Jobfind Centres Australia Pty Ltd	Tjuwanpa Outstation Resource Centre (Aboriginal Corporation)
Kalano Community Association	Warnbi Aboriginal Corporation
MatrixIT	Winun Ngari Aboriginal Corporation
Max Employment	WISE Employment
MEEDAC Incorporated	Yulella Incorporated
Mission Australia	
Miwatj Employment And Participation Ltd	