

**Submission to the Senate Finance and Public Administration References Committee**

on

**The appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)**

by

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Dear Committee,

In response to your itemised terms of reference on CDP, I would like to make the following submission.

- a. the adequacy of the policy process that led to the design of the CDP;

I have limited knowledge of the policy process that led to the emergence of CDP in mid-2015. It appears to have begun with an announcement by the Minister for Indigenous Affairs in December 2014 that 'from July 2015' remote job seekers aged 18 to 49 would be asked to 'undertake work – like activities five days per week' and '25 hours per week, based on their individual assessed capacity' (Australian Government 2014). The further development of this policy idea in early 2015 appears to have been conducted by the Department of the Prime Minister and Cabinet through internal processes and through meetings with providers of the then Remote Jobs and Communities Programme (RJCP). As RJCP providers were at that time less than two years into five year contracts, this policy process was in effect about a change of the terms of their contracts. The renaming of the program from RJCP to CDP was announced by Minister Scullion fairly late in this process in early June 2015 (Australian Government 2015).

I have more substantial knowledge of the policy process leading to RJCP from 2011 to 2013, as this was a more open extended process leading to more substantial public documents at several points. In addition to examining these public documents, from late 2013 I was a Chief Investigator on an Australian Research Council Linkage Project with Jobs Australia, which allowed myself and PhD scholar Lisa Fowkes to interview during 2014 some of the politicians and officials involved in the emergence of RJCP.<sup>1</sup> I have analysed the public documents relating to RJCP and drawn on these 2014 interviews in a recent publication (Sanders 2017).

That 2017 publication recounts how RJCP emerged in 2012-13 as a cross-departmental amalgamation for remote areas of four previous programs with very different histories and modes of operation – Job Services Australia (JSA), Disability Employment Services (DES) and the Indigenous Employment Program (IEP) from within the Employment portfolio and the Community Development Employment Projects (CDEP) Scheme from within the Families, Housing, Community Services and Indigenous Affairs portfolio. I was somewhat skeptical of the easy official language of 'fragmentation' and 'integration' and not surprised when IEP was pulled back from the amalgamation process in the early months of implementation. IEP was an employer-focused program while the others were focused on clients/ income support recipients. Even combining the

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<sup>1</sup> Australian Research Council Linkage Project 130100226 - Implementing the remote jobs and communities program: how is policy working in Indigenous communities?

three client-focused programs seemed ambitious to me, given their very different styles of operation and client bases.

My published analysis of the emergence of RJCP has focused on the relative influence of two Commonwealth departments from the Gillard/Rudd years, DEEWR and FaHCSIA. I viewed the competition for influence between these departments as healthy and beneficial for the policy making process, with DEEWR promoting its employment services contracting processes and FaHCSIA adding some knowledge and experience of economic and social realities in remote Indigenous communities. This latter could be seen in two aspects of RJCP which suggested FaHCSIA's involvement, the Community Action Plans and the Community Development Fund.

When RJCP was moved into the Department of the Prime Minister and Cabinet (DPM&C) after the election of the Abbott Coalition government in September 2013 I wondered what would become of this beneficial inter-departmental competition for policy influence. The answer seems to be that FaHCSIA-type influences on RJCP faded, such as the Community Action Plans and the Community Development Fund, and that employment services contracting influences increased. RJCP within DPM&C during 2014 and early 2015 became more purely an employment services contracting program and less an Indigenous communities grants program. This suggests that a deficiency in the policy process leading to CDP in late 2014 and early 2015 may have been an excess of employment services contracting influences and, despite Minister Scullion's own constituency knowledge as Senator for the Northern Territory, a lack of departmental influence drawing on knowledge and experience of remote Indigenous communities. My colleague Lisa Fowkes may be able to cast some greater light on this process as she is more steeped in employment services contracting than me and was able informally to observe one of the meetings between DPM&C and RJCP providers in the early months of 2015. By contrast, my past experience has come from Indigenous affairs and the CDEP-side of the RJCP amalgamation. Also I did not observe any of the meetings in the early months of 2015 which led to RJCP being re-designed and re-named as CDP.

b. the nature and underlying causes of joblessness in remote communities;

A job, fundamentally, is an activity undertaken weekly for which someone else is willing to pay you a wage. The payer of that wage can be a private sector business or a public sector agency, both of which come in many different shapes and sizes. There are, on this conception, many jobs in remote Australian communities, but not as many as there are local Indigenous residents.

One cause of joblessness in remote communities is simply this over-supply of local Indigenous residents relative to the willingness and ability of private sector businesses and public sector agencies to pay for wages. However, there are also more complex social and economic processes going on here, as evidenced by the fact that significant numbers of non-Indigenous people are recruited into remote areas to take up jobs unfilled by locals. This is often seen as due to a lack of skills among local Indigenous people, to be fixed by more education, training and skills development. However, based on thirty five years of observation I would suggest that local Indigenous people have lots of under-utilised skills and training and that there is often something else inhibiting them from taking up or thriving in many jobs.

Over a decade ago, when writing about senior managers in remote Indigenous community governance, I observed that these positions were the focus of very heavy demands for access to resources and that the skills involved in being a good senior manager were political and strategic as

much as technical and financial. While I identified some instances of local Indigenous people successfully taking on these roles, I also argued that many, like many non-Indigenous people, 'simply will not wish to take them on' (Sanders 2006: 13). Many jobs in remote communities have elements of controlling and directing local Indigenous community members and it is not entirely surprising that local Indigenous people do not want to take on these jobs, or struggle when they do.

One such job is that of employment services case manager under JSA, RJCP and most recently CDP. This is both an administrative and a technical computer-based job which also involves directive disciplining of clients who are community members. The vast majority of people I have observed doing this job are non-Indigenous outsiders. Locals may at times try the job and develop the computer skills for it, but the dynamic of directiveness in relation to other community members is hard to sustain. Joblessness among remote Indigenous community members is not, therefore, just about insufficient numbers of jobs and skills, but also about the dynamics of jobs in relation to other community members.

- c. the ability of the CDP to provide long-term solutions to joblessness, and to achieve social, economic and cultural outcomes that meet the needs and aspirations of remote Indigenous people;

In defending CDP since 2015, Minister Scullion has often pointed to significant numbers of participants exiting to jobs. This reinforces that there are significant numbers of jobs in remote areas and that local Indigenous people do enter these jobs in significant numbers. My observation, however, is that local Indigenous people tend to circulate in and out of jobs over time rather than clearly building careers through staying in jobs and moving strategically between them. Long-term solutions to joblessness would need to increase the career-building aspects of the jobs in which Indigenous people are involved, as well as increasing the numbers of jobs in remote areas.

CDP has little ability either to increase the number of jobs in remote areas or to turn jobs into careers. CDP deals with those who do not have jobs, requiring them to undertake work-like activities 5 hours per day, 5 days per week in return for income support payments made under the Social Security Act. Once people are in jobs for 26 weeks they effectively lose contact with CDP, though they may reappear later as CDP clients if they move out of those jobs and not into others.

In this commentary on CDP, there is an implicit contrast with the former CDEP scheme which was run by the Commonwealth Indigenous Affairs portfolio for over thirty years.<sup>2</sup> In that program participants were employed part-time, 15 hours per week, for a wage roughly equivalent to a social security unemployment payment. Participants could also work more hours for more pay if the provider organisation could find the budget for that. As employment which could be directed towards Indigenous community needs and aspirations, the CDEP scheme could achieve social, economic and cultural outcomes and provide a long-term solution to joblessness. However, over

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<sup>2</sup> The Community Development Employment Projects scheme was run by the Department of Aboriginal Affairs from 1977 to 1990 and by the Aboriginal and Torres Strait Islander Commission from 1990 to 2004. With the impending abolition of ATSIC, CDEP was moved in 2004 to the Department of Employment and Workplace Relations. After three years in the employment portfolio, CDEP was returned to the Commonwealth's Indigenous affairs portfolio with the election of the Rudd Labor Government in November 2007. CDEP remained in the Department of Families, Housing, Community Services and Indigenous Affairs for the next six years until its own abolition through the emergence of RJCP (see Sanders 2012, 2017).

time this became seen as a weakness of CDEP, rather than a strength, with CDEP criticised for being a 'destination' for Indigenous workers rather than a 'pathway' to other employment.

There were indeed criticisms to be made of CDEP as employment, such as not having superannuation coverage or much career progression. However, unlike CDP, it was employment, albeit part-time and government-funded. Together with generous 'top up' provisions, this meant that CDEP did provide a long-term solution to Indigenous joblessness in remote communities and a resource for achieving social, economic and cultural outcomes (although not always well used). By contrast, CDP is part of the income support system and creates a much more individualised, compliance-focused relationship between participant and provider. CDP is welfare conditionality, whereas CDEP was part-time, publicly-funded and community-directed employment.

- d. the impact of the CDP on the rights of participants and their communities, including the appropriateness of the payments and penalties systems;

This contrast between CDP and CDEP can also be seen in relation to the rights of participants and their communities. The 15 hours per week work requirement of CDEP was designed to avoid accusations that it was reproducing historical patterns of under-award wages and contravening the rights to equal award wages of Indigenous people. By increasing activity requirements to 25 hours per week CDP has opened itself to the accusation that it infringes rights to award wages. Participants are obliged to undertake 25 hours a week of work-like activities, but are not paid the equivalent of 25 hours per week of a basic award wage.

Another difference between CDP and CDEP is that the former Indigenous affairs portfolio program was built *above* social security rights, whereas the current program is *embedded in* the social security system. Even when CDEP was at its most extensive with 35,000 wage earners Australia-wide, there were about this number again of Indigenous people receiving unemployment payments in the social security system. At the community level, this produced a labour force structure in which CDEP participants were employed and of higher labor force status than the unemployed on social security payments, (while also of lower labour force status than others employed in more lucrative private or public sector jobs). CDP, by contrast, counts its participants as unemployed and deals with them within the rights and obligations framework of the social security legislation. CDP and RJCP before it have, I argue, newly introduced many Indigenous Australians to the rights and obligations of the social security system. By contrast, CDEP kept up to 35,000 Indigenous community workers outside the social security system, at least in large part.<sup>3</sup> CDEP workers could, like others, become unemployed and fall back onto social security rights to unemployment payments. But CDP participants, already being in the social security system, have no other rights to fall back on.

Increasing penalties imposed on CDP participants, and RJCP participants before them, are another indication of weakened social security rights. Official quarterly figures are released by the Department of Employment in a way that does not facilitate easy comparison over time. However, as part of understanding RJCP and CDP for our ARC Linkage Project, Lisa Fowkes has invested

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<sup>3</sup> CDEP participants were entirely outside the social security system for the first twenty years. This led to some accusations of differential treatment and racial discrimination (see Human Rights and Equal Opportunity Commission 1997). From 1999, to address these concerns, CDEP participants were given a Customer References Number within the social security system and paid a small supplement equal to those in Work for the Dole. This was beginning of a long slow process of drawing CDEP participants into the social security system (see Sanders 2016a).

considerable time and effort in creating a time series of quarterly penalty figures (see Fowkes and Sanders 2016, Fowkes 2016). Penalties imposed on the approximately 35,000 CDP participants have been rising rapidly and in 2016 reached a level greater than those imposed on the roughly 750,000 Jobactive participants in other parts of Australia.<sup>4</sup> This more than 20 fold disproportionality in social security penalties imposed on CDP participants is troubling and suggests inappropriate program design and implementation.

- e. the funding of the CDP, including the use of unspent funds in the program;

I am not expert on the detailed funding arrangements for CDP, however I will venture a few comments on the different aspects of CDP funding and how they might relate to the notion of 'unspent funds'.

Funding for CDP effectively has two aspects coming from two parts of government, the social security payments of CDP participants coming from Centrelink/ Department of Human Services and funding for CDP providers coming from DPM&C.

Because DPM&C follows an employment services contracting model with CDP providers, paying on outputs after the fact, there is very little sense of unspent funds in this aspect of CDP funding (although expenditure can come in under budget). Once payments are made to providers for past outputs, the money is effectively theirs to use as they see fit, to produce the next set of monthly outputs.

In the contract variation from RJCP to CDP I understand that the number of outputs for which providers would receive payment was reduced. Most CDP provider funding became linked to actual daily attendance of participants at work-like activities, or to providers reporting non-attendance and attempting to re-engage participants within two weeks. This created a heavy punitive emphasis in relations between CDP providers and participants, as well as introducing greater uncertainty into provider budgeting. In my most recent writing on CDP I have suggested that this link should be broken between provider funding and actual daily attendance of participants at activities (Sanders 2016b in Jordan and Fowkes eds).

In the second aspect of CDP funding, income support payments to participants, the notion of 'unspent funds' possibly relates to penalties and what happens to the money that participants would have otherwise received had they not been penalised. My understanding is that these are simply savings within the welfare/income support appropriation managed by the Department of Human Services as directed by other departments with a range of social policy responsibilities. If these savings were thought of as 'unspent funds' which, for example, were directed back to remote communities through a hypothecated fund, then this could set up perverse incentives for even more penalties being imposed on CDP participants.<sup>5</sup>

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<sup>4</sup> It is purely coincidental that the number participants in CDP since 2015 has been roughly the same as the number in CDEP at its peak up to 2005-6. The 35,000 CDEP participants were spread Australia-wide, while CDP participants are all in remote areas. Despite its name change away from RJCP, CDP remains exclusively for remote areas.

<sup>5</sup> Something like this seems to be contemplated in Minister Scullion's proposed CDP Social Security amendment legislation, discussed further below under terms of reference h. See Australian Government 2016: p11.

The idea of 'unspent funds' probably harks back to CDEP and more of a community grants model of funding. Under these models, community organisations are granted amounts of money to spend for specified purposes and then acquit those grants over time as spending occurs. CDEP was such a program and the grant included both the wages component for participants and on-cost and support components. Through both lower than expected participation and 'no work, no pay' policies, savings from the CDEP wages component could emerge and rules were then developed around what those 'unspent funds' could be used for, such as top up wages for those who worked more than 15 hours. This is a very different funding model from either employment services contracting or individual entitlement (and penalties) under social security legislation. Funding models or 'modalities' are important to consider in the design and implementation of Indigenous programs (see Moran, Porter and Curth-Bibb 2014). They have considerable effects on the ongoing operation of organisations.

- f. the extent of consultation and engagement with Aboriginal and Torres Strait Islander communities in the design and implementation of the CDP, and the role for local decision making within the program;

In response to term of reference a. above, I noted my limited direct knowledge of the policy process leading to the emergence of CDP in the early months of 2015. My comments there related more to the policy process relating to the emergence of RJCP from 2011 to 2013, which was more open and publicly documented. My sense of the consultation process for CDP was that it involved existing contracted RJCP providers, rather than Aboriginal and Torres Strait Islander communities more broadly. This was understandable given that RJCP providers were at that point less than two years into contracts anticipated to be for five years. These consultations were effectively with RJCP providers about changing the terms of their contracts for the next three years, rather than with Aboriginal and Torres Strait Islander communities.

The role of local decision making within CDP seems focused on case managers and activities supervisors dealing with individual clients/participants. The amount of discretion these local workers have seems constrained by administrative, compliance and IT system requirements. Provider engagement with Aboriginal and Torres Strait Islander communities as groups seems constrained by a highly individualised service delivery structure. CDP is, if anything, the antithesis of community development and local community decision making. My ANU colleague Janet Hunt will, I am sure, have more to say on community development approaches in her submission to the Committee.

- g. alternative approaches to addressing joblessness and community development in remote Indigenous communities; and

I am aware that the Aboriginal Peak Organisations of the Northern Territory have proposed a new Remote Development and Employment Scheme under which about 30% of the CDP caseload would be offered 20 hours per week of employment (APO NT 2017). I am supportive of this approach as a way of moving a considerable proportion of Indigenous people in remote areas into employment of value to their community. APO NT also suggest a 'new delivery agency' (p33) for this Scheme and that existing CDP providers would become Remote Job Centres employing many of these people and organising their employment by others. I agree with this approach but would insist that at all times the terms Development and Employment be used in conjunction. This new Scheme needs to be viewed as not just an exercise in employment, but also one in which Aboriginal communities are doing things they value. The support and responsibility for this initiative within government would also need to be broader than just within the employment portfolio.

The APO NT proposal still leaves roughly 70% of the current CDP caseload of 35,000 participants within the social security system. This seems realistic, while also giving Indigenous Australians in remote areas substantial opportunities for employment. For those left in the social security system, APO NT suggest a lessening of activity requirements so that they are 'no more onerous' (p23) than those applying to income support recipients in other parts of Australia. They also note that some of these people on the CDP caseload have 'chronic health problems' (p26) and could possibly qualify for Disability Support Pension and/ or Disability Employment Services. I agree with both these ideas and with the idea that full rollout of National Disability Insurance arrangements to remote areas could create both improved levels of service and many employment opportunities within this proposed new Scheme (p17). This may also help create jobs for some of the burgeoning numbers of Indigenous people under 25 ('youth') in the CDP caseload (p29).

It may be that once an employment-based alternative to CDP is up and running, a virtuous cycle of growing employment in remote areas emerges and numbers of working –age Indigenous people on social security payments start to fall.

h. any other related matters.

Since 2 December 2015 Senator Scullion has promoted the idea of legislation that would remove CDP participants from the national legislated Job Seeker Compliance Framework. Under this national Framework, contracted employment services providers advise the Department of Human Services (DHS) if a job seeker has failed to attend a mutual obligation activity. It is then up to DHS to consider the advice and other matters and decide whether a compliance penalty should be applied. This is argued to be a complex process with significant time lags between compliance breaches and penalties. Instead the promoted legislation would remove DHS's role and delegate all compliance decision-making to CDP providers.

This proposal effectively removes CDP participants from safeguards that have been built into the social security legislation over the last two decades as compliance penalty provisions have been increasingly introduced. The suggestion is that an alternative remote area compliance framework created under ministerial regulations would be 'simpler', 'more immediate' and 'easier for the job seeker and CDP provider to understand' (Australian Government 2016: 5). This sounds alluring, but is to my mind unconvincing. The idea that there would be 'one penalty for not attending an activity' calculated on 'hourly' basis which 'CDP providers would be required to apply' unless the 'jobseeker has a reasonable excuse for not attending' or has 'an exemption from activities' sounds rigid and punitive, as well as simple and immediate (Australian Government 2016: 6). More discretion to encourage and work with CDP participants seems needed, rather than hourly monitoring and penalties. Minister Scullion's promoted legislative solution takes CDP even more down the path of individualised surveillance of participants by providers and even further from genuine community development.

Minister Scullion's legislative solution feels like a bigger dose of the same punitive program medicine. APO NT's proposal, by contrast, moves away from a punitive centrally-controlled approach and instead promotes autonomy and discretion within local community contexts. I commend APO NT for their proposal and recommend that the Senate Committee consider it carefully as an alternative to the Minister's legislative proposal.

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