



National Congress of Australia's First Peoples

Submission on the *Social Security Legislation Amendment (Community Development Program) Bill 2018*

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About the National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples is the peak representative body for Aboriginal and Torres Strait Islander peoples. Established in 2010, National Congress has grown steadily and now comprises over 180 organisations and over 9,000 individual members, who elect a board of directors.

National Congress advocates self-determination and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. National Congress believes that Aboriginal and Torres Strait Islander people must be central in decisions about our lives and communities, and in all areas including our lands, health, education, law, governance and economic empowerment. It promotes respect for our cultures and recognition as the core of the national heritage.

In pursuit of self-determination and rights for Aboriginal and Torres Strait Islander peoples, National Congress' main foci to date have been health, education, land and sea rights, justice and sovereignty. In addition, National Congress has been involved in a range of other issues, including cultural maintenance and development; government relations, including treaty discussions; employment and economic empowerment; housing; family violence; children and youth; disabilities; and governance and leadership.

Since being established, National Congress has actively sought to ensure that the voices of Aboriginal and Torres Strait Islander peoples are heard both domestically and internationally. We have been represented at the meetings of several international bodies, including the UN Permanent Forum on the Rights of Indigenous Peoples, and the UN Human Rights Council and the Commonwealth Peoples Forum. Domestically, we have led the creation of the Redfern Statement, which calls upon the Australian Government to work alongside Aboriginal and Torres Strait Islander peoples in order to develop lasting policy solutions. We have also been involved in Closing the Gap Roundtable Consultations, the Closing the Gap Campaign and in providing advice to governments regarding key policy decisions relating to Aboriginal and Torres Strait Islander affairs.

Responses to Proposed Amendments

Application of the Targeted Compliance Framework (TCF) to Community Development Program participants

National Congress asserts that the introduction of the Targeted Compliance Framework (“TCF”) in remote communities is inappropriate, and will not achieve the desired outcome of reducing the number of penalties applied to CDP participants. Although we acknowledge that the Australian Government has engaged in some community consultation in the process of preparing this Bill, the TCF was not designed in collaboration with Aboriginal and Torres Strait Islander peoples, communities and organisations.

Indeed, National Congress notes that the TCF was never designed for use in remote areas, and that it would be inappropriate to apply it to CDP participants. The TCF was designed for use in urban and regional contexts, where the vast majority employment program participants regularly comply with obligations, and those who refuse to often do so deliberately due to dissatisfaction with the system. This is not the case in remote communities: many CDP participants breach obligations on a more regular (i.e. weekly or fortnightly) basis due to social, cultural and community obligations, and persistent non-compliance is more likely to be the result of structural barriers such as geographical challenges.

As such, National Congress believes that, although the introduction of the TCF may remove some penalties for one-off breaches, its overall effect will be equal to, or even worse, than the current system. As CDP participants are more likely than urban Jobactive participants to regularly breach obligations, many are likely to experience the more severe penalties stipulated by the TCF, such as the suspension of payments for two to four weeks. Additionally, the TCF does not allow for the resumption of payments as an incentive to re-engage, meaning that participants who have their payments suspended for, for instance, four weeks will not be paid even if they choose to resume working two weeks into the penalty period. This is highly concerning given the nature of remote Aboriginal and Torres Strait Islander communities, and has the potential to lead to participants dropping out of employment programs altogether.

Finally, National Congress notes that the introduction of the TCF does not address many of the concerns raised by Aboriginal and Torres Strait Islander communities and organisations with the CDP. The TCF is difficult to understand: elements such as the various “zones,” and the sudden leap from merely withholding payments to penalties equivalent to one, two or four weeks’ pay are complex and may be challenging for participants to grasp. Furthermore, due to the rigid structure of the various TCF “zones,” it results in the application of penalties for breaches of obligations which are vastly disproportionate to the severity of those breaches. This, in addition to the lack of opportunities to be rewarded for re-engagement, will only further entrench frustrations with the CDP, and reinforce our communities’ sense of disempowerment.

Recommendation 1

Do not implement the TCF as part of the CDP, and instead implement a wage-based compliance system to provide participants with positive encouragement to work.

Reduction of mutual obligation hours to 20 hours per week

National Congress supports the reduction of mutual obligation hours. However, as outlined in our previous submission to the Department of the Prime Minister on Cabinet on the *Remote Employment and Participation* Discussion Paper, the mere reduction of the number of hours which CDP participants are required to work is unlikely to solve issues relating to non-compliance.

The requirement that CDP participants work at regular times each week (usually five days per week) with little to no flexibility is responsible for a large portion of breaches of obligations. CDP participants regularly possess social, familial, cultural and community obligations which take priority over work commitments. Participants should be afforded the flexibility to structure their work obligations around these commitments. This has the benefit of not only promoting individual and community wellbeing, but also of creating enthusiasm for the CDP: participants are far less likely to experience resentment if they do not perceive the CDP as being in conflict with other matters which are important to them.

Recommendation 2

Implement measures to afford CDP participants flexibility with regards to the scheduling of their working hours, particularly to accommodate familial, cultural, social and community obligations.

Allowing local health workers to supply evidence to the Department of Human Services relating to the reduction of participants' mutual obligation hours

National Congress views this as a positive change which will assist in the identification of vulnerable individuals, and the modification of their obligations under the CDP so that they are better suited to their individual conditions.

Creating 6,000 subsidised jobs in remote Australia

In principle, National Congress supports the creation of subsidised employment opportunities as a means of providing CDP participants with a pathway to unsubsidised full-time employment. However, we note that the current proposal is relatively vague and unformed. As such, we stress that the Australian Government

must undertake thorough community consultations and modelling to ensure that the money spent on creating subsidised jobs does not go to waste.

In particular, National Congress stresses the importance of creating meaningful employment, and not merely “busy work” which has little relevance to the lives of Aboriginal and Torres Strait Islander peoples. Many CDP participants are currently required to undertake work which provides them with few transferable skills and limited opportunities for ongoing development, and as a result fail to see the benefit of continuing to fulfil their obligations. In order to have a tangible, positive impact on remote communities, subsidised jobs must be tailored to the circumstances of those communities and provide participants with actual opportunities to move into full time employment.

National Congress additionally asserts that Aboriginal and Torres Strait Islander organisations must be prioritised in decisions made about the allocation of funding. Community owned and operated organisations have the knowledge and expertise necessary to provide CDP participants with meaningful work which contributes to the cultural and social wellbeing of the communities in which they are located, and are therefore best placed to deliver positive outcomes.

Recommendation 3

Engage in thorough community consultations and modelling to ensure that meaningful subsidised work is created, and prioritise funding for Aboriginal and Torres Strait Islander organisations.

Prioritising Aboriginal and Torres Strait Islander community controlled and operated organisations

National Congress stresses that Aboriginal and Torres Strait Islander community controlled and operated organisations must be prioritised in decisions made relating to the allocation of funding under the CDP. As discussed above, our organisations possess the knowledge and expertise required to deliver culturally safe and relevant services to Aboriginal and Torres Strait Islander peoples and are therefore best placed to alleviating high rates of unemployment and delivering positive outcomes to our communities.

National Congress notes that the Australian Government’s tendency to provide resources to mainstream service providers and employers under the CDP is inappropriate and leads to undesirable outcomes. Organisations which are not locally based and operated are far less invested in the long-term wellbeing of the communities in which they work, and therefore tend to provide employees with “busy work” rather than genuine opportunities for personal development. In contrast, Aboriginal and Torres Strait Islander controlled organisations are able to develop long-term plans for both communities and individual participants, provide work that is culturally relevant, and accommodate participants’ cultural, familial and community obligations.

More broadly, National Congress stresses that Aboriginal and Torres Strait Islander communities must be consulted and actively involved in the design and delivery of the CDP. Programs designed by Aboriginal and Torres Strait Islander peoples are likely to attract far greater community enthusiasm and trust, increasing their effectiveness. Furthermore, allowing our peoples to determine how best to overcome the challenges which they currently face, and to design long-term solutions which tackle the root causes of issues such as unemployment through cultural healing and community rejuvenation, is far more likely to achieve desirable outcomes.

Recommendation 4

Actively involve Aboriginal and Torres Strait Islander communities and organisations in the design and delivery of the CDP, and prioritise funding for Aboriginal and Torres Strait Islander community controlled organisations.

Wage-based employment

National Congress is disappointed the continued failure of the Australian Government to shift towards a wage-based model of remote employment. Although we acknowledge that some of the reforms contained in the Bill have the potential to remedy some of the concerns raised by CDP participants, there are a number of structural issues associated with the operation of the CDP within the income support system. In particular, CDP participants continue to experience the stigma of “working for the dole,” and feel as if they are only being made to do “busy work” instead of real, productive work.

A wage-based model would greatly simplify the obligations of CDP participants by reducing them to those that are currently associated with mainstream full-time work and eliminating the need to impose penalties. In addition, it encourages greater flexibility, by allowing participants to negotiate their own working hours around cultural and familial commitments instead of abiding by rigid obligations. Perhaps most importantly, a wage-based model would allow participants to feel as if they are doing “real work,” generating enthusiasm for moving into mainstream work.

National Congress has previously discussed possible models for a wage-based employment model in its submission to the Department of the Prime Minister and Cabinet. Our preferred model is attached as Appendix A to this submission.

Recommendation 5

Transition to a wage-based remote employment program which provides participants with real wages.

Culturally relevant employment opportunities

Stimulating the growth of mainstream employment opportunities in some remote Aboriginal and Torres Strait Islander communities is extremely difficult due to their remoteness, small population size, and other environmental, social and cultural factors. As a result, National Congress stresses that the Australian Government should afford CDP participants the ability to participate in culturally or socially relevant work, such as cultural preservation and contributing to community wellbeing, as a means of fulfilling their obligations.

Enabling CDP participants to undertake activities such as cultural maintenance as part of the fulfilment of their obligations is enormously beneficial to Aboriginal and Torres Strait Islander peoples. Ensuring that our peoples have an ongoing feeling of cultural and spiritual connection, and can preserve our languages, histories and traditions, is an important step towards empowering our communities. In addition, National Congress notes that encouraging the development of traditional practices also benefits the Australian economy as a whole, by encouraging growth in sectors such as the arts, tourism, recreation, and so on.

Recommendation 6

In communities where mainstream employment opportunities are difficult to provide, expand the scope of applicable activities under the CDP to include socially and culturally relevant activities such as cultural maintenance, the preservation of languages, and traditional practices such as fishing and hunting.

Refresh the current Closing the Gap target relating to employment

National Congress stresses the importance of updating the current Closing the Gap target (halving the gap between Aboriginal and Torres Strait Islander and non-Indigenous employment outcomes by 2018) as part of the refreshed Closing the Gap Strategy. We suggest that the failure of the current Strategy to meet its targets should not be taken as an excuse to give up on improving employment outcomes altogether, and that a refreshed target of eliminating the gap between Aboriginal and Torres Strait Islander and non-Indigenous employment outcomes by 2040 would be appropriate. We also assert that the Australian Government must continue to undertake detailed evaluations of progress on employment outcomes in order to determine the effectiveness of programs such as the CDP, and to reform those programs as necessary.

Continuing to measure progress on Aboriginal and Torres Strait Islander employment is an important step towards our self-determination. Although National Congress warns against seeing economic outcomes as being the sole determinant of empowerment, ensuring that Aboriginal and Torres Strait Islander peoples have access to real, meaningful forms of employment is a central part of allowing our communities to develop a sense of independence. Employment also provides a

number of individual benefits, such as a regular schedule and sense of purpose, which all Aboriginal and Torres Strait Islander peoples should be able to access.

Recommendation 7

Implement a refreshed Closing the Gap target to eliminate the gap between Aboriginal and Torres Strait Islander and non-Indigenous employment outcomes by 2040, and continue measuring employment outcomes in order to facilitate the development and reform of programs such as the CDP.

Appendix A: National Congress' submission to the Department of the Prime Minister and Cabinet

Discussion on a new wage-based model

Q: 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?

The introduction of a “three tiered” approach to stream employment project participants, and to move participants along a pathway to employment is certainly a welcome development. Such a development has the potential to address one of the most consistent criticisms of the current Community Development Programme, that is, that it fails to take into account personal circumstances such as mental health, chronic illness and disability, and forces all participants into a training and employment program which is disjointed and provides little in the way of long-term progress towards full-time work.

Tier 1: Basic Services

The introduction of a Basic Services Tier (“Tier 1”) for highly vulnerable job seekers is a welcome addition. Although National Congress must raise some concerns with the proposition that administration of Tier 1 participants should remain with the Department of Human Services (see our response to the following question), recognising that special arrangements must be made to assist people in overcoming barriers such as mental health issues, chronic illness and disability is a positive step that will allow more Aboriginal and Torres Strait Islander people to become actively engaged in the economic and social life of their communities.

Punishing individuals who face significant barriers to participating in employment and training activities, as occurs under the current CDP system, both fails to encourage future compliance with obligations and actively contributes to feelings of disempowerment and financial insecurity which only reinforce those barriers. A safety net must be maintained to ensure that Aboriginal and Torres Strait Islander people can support themselves in the period they require to overcome challenges, so that they can become productive community members and employees in the future. Regular reviews of a participant’s status, conducted once every twelve months, will be an effective means of ensuring that Tier 1 does not become a “destination.”

Tier 2: Remote Job Services

Current opportunities for meaningful training under the CDP are extremely scarce. The introduction of a Remote Job Training Tier (“Tier 2”) is a positive step towards a more organised integration of training and apprenticeship activities into a remote employment program. National Congress suggests that a proportion of subsidised jobs created under the new employment scheme could be earmarked for apprenticeships or traineeships, with the ultimate aim of transitioning participants into existing or emerging jobs. By operating as, or partnering with a training company,

subsidised employment providers could provide participants with a continuity of employment which would promote community enthusiasm for the scheme as a whole. National Congress suggests that normal apprenticeship arrangements, such as the payment of a wage equivalent to at least the minimum wage, should apply. Employer incentives should also be provided to ensure that a steady supply of positions is available. We note that such a model is cost saving, as it encourages local people to develop the capacity to provide essential services and therefore reduces the need to “fly in” tradespeople and service providers from afar.

The training process, of course, does not cease merely because someone has found full-time employment. The provision of additional skills during the course of employment, including in foundational skills such as literacy and numeracy, as well as vocational training, allows workers to be more productive and shelters them from the economic fluctuations which often disproportionately affect remote communities. National Congress therefore suggests that funding be allocated to training programs designed to extend the skills of those currently employed in remote communities. Furthermore, we stress that, in order to maximise flexibility and the ability of participants to access skills that are culturally or socially relevant to them, these training programs should not be limited to certified training.

National Congress suggests that an additional benefit of streaming participants is the ability to prioritise longer-term training outcomes over immediately moving into full-time work. Under the current CDP model, there is an overwhelming tendency to force individuals to take up full-time work even if they are already undertaking training, leading to wasted time, frustration, and a shortage of skilled labourers. By streaming participants, the Australian Government could ensure that those in Tier 2 who are completing a traineeship or apprenticeship, or who are in the process of transitioning to an unsubsidised job, are able to prioritise longer-term outcomes instead of being forced to take up positions which are frequently subsidised or unskilled.

Tier 3: Active short and long-term work

National Congress is broadly supportive of the Proposal for a Remote Development and Employment Scheme prepared by the Aboriginal Peak Organisations NT (“APONT”) in 2017. Specifically, National Congress believes that the establishment of a Remote Jobs Investment Fund, or similar fund, in order to allow Aboriginal and Torres Strait Islander-controlled organisations to employ local people in order to contribute to the economic, social and cultural lives of our communities. Funding to organisations should include provisions for superannuation and overheads, as well as access to an additional training account to facilitate training and apprenticeship arrangements discussed above.

A key advantage of establishing a Remote Jobs Investment Fund is the ability to tailor the distribution of funding according to the needs of local communities. Establishing such a fund would allow the Australian Government to tailor the amount of assistance provided to a community depending on the robustness of its labour market and its level of development instead of providing a uniform level of funding to all remote communities regardless of their individual circumstances. Vulnerable communities could be identified and provided with additional support, while

communities with greater economic and social strength could gradually have their funding reduced to encourage local businesses to develop a greater sense of independence. National Congress notes that such an approach would have the added benefit of promoting a far more systematic effort to monitor the wellbeing of Aboriginal and Torres Strait Islander communities in remote Australia, and therefore encouraging genuine consultation and collaboration with our peoples and organisations.

National Congress stresses that in order to access funding, organisations and businesses should be required to identify the tasks and activities which employees would be expected to complete, and determine what social, environmental, cultural or economic benefits those tasks and activities could deliver to communities. Tasking Aboriginal and Torres Strait Islander-controlled organisations – or the “Remote Job Centres” highlighted in the APONT model – would ensure that this is done in genuine collaboration with individual communities, and not imposed from afar by the Australian Government according to a culturally deterministic and reductive model of appropriate employment. This expansion of the types of benefits which could be considered allows Aboriginal and Torres Strait Islander peoples to participate not only in mainstream employment, but also in meaningful activities which strengthen the bonds and capacity of the communities in which we live. Furthermore, requiring businesses and organisations to disclose the work that employees are expected to complete and the benefits of that work would create a culture of accountability, combatting the tendency of the current CDP to “make work” which delivers no substantial outcomes to our peoples. Different enterprises could be evaluated based on not only their commercial potential, but also their ability to contribute to the cultural safety and wellbeing of our communities, factors which are often just as important in combatting the disadvantage which Aboriginal and Torres Strait Islander peoples face as our economic circumstances.

Q: 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?

Tier 1

There is some merit to the suggestion that Tier 1 participants should be administered outside of the national income support and compliance system. National Congress is concerned that the Department of Human Services lacks the infrastructure, cultural competence and resources necessary to evaluate the status of, and provide guidance to, vulnerable Aboriginal and Torres Strait Islander people living in remote communities. There is currently significant under-reporting of the barriers to participation faced by our peoples in remote communities due to their inability to access medical and other assessments which are required for an evaluation of an individual’s status under a national income support and compliance system.

Furthermore, a lack of infrastructure means that workers from the Department of Human Services are unable to conduct face to face assessments and are instead forced to conduct evaluations by phone or merely by reviewing an individual’s case file, resulting in failures to identify significant personal or health barriers to participation in employment projects.

National Congress stresses that in light of these shortfalls, primary responsibility for determining whether an individual should be placed in the Tier 1 stream should be placed in the hands of the Aboriginal and Torres Strait Islander organisations responsible for the distribution of funds and creation of jobs under this new model (i.e. organisations akin to the Remote Job Centres described in the APONT model). Given that these organisations have pre-existing infrastructure in the communities which they serve, they are best placed to conduct thorough and culturally appropriate evaluations of our peoples to determine to which Tier they should be allocated. This is not to say that ties with the Department of Human Services should be severed entirely: there are important benefits to ensuring that vulnerable individuals are known to the Australian Government (subject to privacy considerations), and that information about them is made easily accessible. However, National Congress stresses that Aboriginal and Torres Strait Islander people must be provided with the necessary resources and allowed to care for the vulnerable members of our communities in the first instance; and that those vulnerable members should only take part in a Department of Human Services evaluation if they wish to.

Tiers 2 and 3

Tiers 2 and 3 should, as mentioned in the Discussion Paper, be placed outside the national income support and compliance system.

The current operation of the CDP within the context of the income support system creates administrative difficulties which both frustrate participants and generate unnecessary costs to organisations. For instance, the Comprehensive Compliance Assessment, a safety measure designed to protect individuals prevented from working due to health or personal barriers, is ill-equipped to deal with the variety of circumstances which may prevent Aboriginal and Torres Strait Islander peoples from participating in CDP, and therefore lead to the imposition of penalties. For instance, people with intermittent health issues, who receive occasional non-work income (from art sales, native title arrangements, etc.), or who do not remain in the same community for long periods of time must go through a complex administrative process to register each change in their personal circumstances. It is important to note that this may result in frustration leading to a loss of enthusiasm for employment projects as a whole. Service providers frequently spend more time undertaking administrative tasks than actually assisting people; vulnerable people often do not receive the support they need; and relationships between employers and employees become strained as payments are increasingly withheld. Clearly, these difficulties indicate an urgent need to move the main arm of any employment program outside the context of the national income support system.

Furthermore, National Congress notes that moving to a wage-based model instead of one based on income support has substantial benefits for both employers and employees. Under CDP, organisations frequently encounter difficulties estimating how much income they will receive in any given month, due to fluctuations caused by the number of participants they are able to hire, the status of those participants, and so forth. A wage-based model in which these organisations receive a lump sum payment for the creation of a defined number of jobs helps eliminate this uncertainty

and allows for longer-term planning. Similarly, for participants, a wage-based model reduces interactions with government agencies such as Centrelink, which often lack the infrastructure (in terms of the quantity of personnel, their cultural competence, and a physical presence) required to effectively service remote communities. Many CDP participants currently complain of being forced to wait upwards of two hours in order to reinstate their Centrelink payments; this issue could be easily resolved if a direct system of payment were to be established between participants and employers.

National Congress stresses, however, that the above should not be taken as a reason for disallowing employment program participants from receiving income support payments entirely. We note that it is crucial that participants who are below the income threshold continue to receive part-payment of income support until they are able to work for enough hours or at a high enough wage. Ensuring that individuals have enough money to support themselves and their families is an important way to relieve financial stress and build enthusiasm for employment more generally.