



Ref: CDP2018_02

20 September 2018

Committee Secretary
Senate Standing Committees on Community Affairs
By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

NSSRN submission to the inquiry into the Social Security Legislation Amendment (Community Development Program) Bill 2018

1. The National Social Security Rights Network (NSSRN) is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with social security and family assistance payments. The NSSRN draws on this front line experience in developing its submissions and policy positions.

Overview of the Community Development Program

2. The Community Development Program (CDP) is the employment and community development service for people who receive unemployment social security payments and live in remote Australia. There are approximately 35,000 CDP participants and 83% of participants are Indigenous.¹ As a condition to receiving income support payments, participants must engage in job activity requirements, including up to 25 hours of work for the dole activities per week. These hours are far greater than required by jobseekers in non-remote areas who participate in the jobactive employment services program. There are also harsh non-compliance measures in the CDP which have many vulnerable people with no income support. Since its introduction, the CDP program has seen a 740% increase in financial penalties compared with the preceding scheme, the Remote Jobs and Communities Programme (RJCP) which had less onerous obligations and greater flexibility over choice of activity.²
3. The staggering escalation of penalties has impoverished many Indigenous people living in remote communities. The CDP has created additional financial and social burdens for many individuals, which affects their families and their communities. For example, the increase in penalties has reduced food security in CDP affected communities. The Arnhem Land Progress Association has stated that since the commencement of the CDP, communities stores have recorded a significant decrease in food sales, "coinciding with an immediate and meteoric increase in financial penalties applied to CDP participants."³ The model has been linked to increased crime and poverty across CDP communities.⁴

1 Department of the Prime Minister and Cabinet, *The Community Development Programme (CDP)*, <<https://www.pmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp>>

2 Lisa Fowkes, *Social security penalties applied to participants in the Community Development Programme*

Overview of first 2 years (1 July 2015-30 June 2017), (Report, Centre for Aboriginal Economic Policy Research, ANU) December 2017, 1.

3 Arnhem Land Progress Association, *Answer to Question on Notice (Question reference number 25), to Senate Finance and Public Administration References Committee*, Parliament of Commonwealth, Inquiry into The Appropriateness And Effectiveness Of The Objectives, Design, Implementation And Evaluation Of The Community Development Program (CDP), received 12 December 2017.

4 Tomlin, Sam, *'Work-for-the-dole crime claim rejected by Indigenous Affairs Minister Nigel Scullion'*, ABC News (Online), 25 August 2017,

4. The program disproportionately impacts on Indigenous Australians, and runs grossly counter to Australia's international human rights obligations under the Convention on the Elimination of Racial Discrimination to prohibit and eliminate racial discrimination in all its forms.⁵ The CDP has not achieved the intended policy outcome of assisting social security recipients into paid employment. While some people have found and kept jobs, most CDP participants have simply suffered loss of income, pushing them and their communities further below the poverty line.⁶
5. For these reasons, the CDP requires urgent reform. Crucially, the penalty regime must cease, the work for the dole obligations must be reduced, and greater flexibility must be introduced to the program.

Summary of the proposed legislation

6. In February 2019, the Department of Prime Minister and Cabinet sought feedback on a discussion paper that proposed several possible amendments to the CDP program. The Social Security Legislation Amendment (Community Development Program) Bill 2018 ("the Bill") comes as a result of this consultation. In their 2018-2019 Budget, the Government committed \$1.1 billion towards reforming the CDP.⁷ The Bill proposes a number of key changes to the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* from 1 February 2019 to implement these measures. In summary, these changes will:
 - Introduce 6,000 wage subsidy positions available to eligible employers of CDP participants, for up to \$21,034 over two years.⁸ Participants who undertake subsidised employment will be exempt from mutual obligation requirements and the compliance framework;
 - Reduce the required CDP work hours from up to 25 hours per week to up to 20 hours per week; and
 - Repeal the current compliance system and instead subject CDP participants to the Targeted Compliance Framework (TCF) that applies to jobseekers living in non-remote areas. However, a point of difference will be that reasonable excuse for drug and alcohol substance issues will be retained for CDP participants without limitation.
7. Although the CDP requires urgent reform, these measures fail to address some of the most concerning problems with the program:
 - CDP participants will still be required to undertake more work for the dole hours than jobseekers in non-remote areas;
 - A harsh penalty regime will continue to apply to participants and arguably will not address the impact of the current penalty framework (whilst there will be fewer financial penalties applied for activities failures, penalties under the new compliance framework are non-waivable); and
 - The program purportedly aims to assist social security recipients into paid work whilst making little attempt to alleviate the various structural barriers to social and economic participation faced by remote communities, including high rates of illness and disability, lack of basic infrastructure, inadequate housing, limited access to technology, low rates of literacy and numeracy, and limited job opportunities.

<<http://www.abc.net.au/news/2017-08-25/indigenous-affairs-minister-rejects-cdp-crime-claims/8842190>>.

⁵ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <http://www.refworld.org/docid/3ae6b3940.html> [accessed 14 December 2017].

⁶ The PM&C reported that the increase in CDP participants exiting from the program could not be fully attributed to gaining employment. Many suggest that the onerous obligations have forced people off income support payments entirely. See Lisa Fowkes, *Social security penalties applied to participants in the Community Development Programme Overview of first 2 years (1 July 2015-30 June 2017)*, (Report, Centre for Aboriginal Economic Policy Research, ANU) December 2017, 8.

⁷ These funds flow from the Department of Prime Minister & Cabinet, Department of Social Services and Department of Human Services.. See Department of the Prime Minister and Cabinet (2018), *2018-19 Budget: Community Development Programme reforms*, Retrieved from <https://www.pmc.gov.au/sites/default/files/publications/budget-fact-sheet-cdp-reform.pdf>

⁸ Commonwealth Government, *Budget Measures 2018-19 — Part 2: Expense Measures*, Community Development Program — reform, <https://www.budget.gov.au/2018-19/content/bp2/download/bp2_expense.doc>, 119.

8. Furthermore, we see little evidence of genuine engagement and partnership between Government and remote Indigenous communities, and understand that there has been very limited consultation in relation to the proposed measures in the Bill. This is contrary to a human rights model approach where individuals are empowered to participate in decisions affecting their human rights, such as the right to social security and an adequate standard of living.⁹ The interests and cultural perspectives of remote Indigenous communities must be at the forefront of CDP reform. For all these reasons, we do not endorse this Bill.
9. The NSSRN has contributed to several consultations and inquiries into the CDP since its introduction. We are an active member of the Fair Work and Strong Communities Alliance, a coalition of over 30 organisations that have endorsed the comprehensive alternative model, the *Fair Work and Strong Communities: Remote Development and Employment Scheme (RDES)*, originally prepared by the Aboriginal Peak Organisations NT (APONT).¹⁰ This model proposes a viable and effective employment program for remote communities and has been developed with Indigenous organisations working in CDP affected areas. We continue to support the Fair Work and Strong Communities model as the preferred alternative to the current CDP and urge the Government to adopt this model. Our arguments in support of this model are set out further in this submission.
10. We address each aspect of the Bill's proposed amendments below.

Introduction of wage subsidy positions

11. Schedule 1 of the Bill amends the *Social Security Act 1991* to support the new CDP subsidised employment positions and exempt those participants from job activity requirements or from entering into an employment pathway plan. The Explanatory Memorandum explains that the subsidised employment positions will be defined through a legislative instrument, and ensure the introduction of 6000 subsidised positions.¹¹ Further amendments are made to the *Social Security (Administration) Act 1999* to exempt participants undertaking subsidised employment from the compliance system.
12. NSSRN supports investment in new wage subsidy positions, particularly as these will provide real wages (minimum wage or above), as well as superannuation and other entitlements that flow from regular work arrangements.¹² However, we understand that the Government has not released details or projections of how the scheme proposed by the Bill will operate, including how many employers may be in a financial position to support the subsidised positions, whether certain CDP participants will be targeted to enter into subsidised employment and what the projected outcomes of this scheme will be for CDP communities over time. There are also very few subsidised roles available.
13. The Bill proposes to exempt participants in subsidised positions from mutual obligation requirements and the compliance framework, including the exemption from penalties arising from work refusal or 'unemployment failures' (such as leaving a job, or being dismissed due to misconduct). Entering into subsidised employment is also voluntary. However, this compliance exemption will not apply to people who take up unsubsidised roles. As outlined in the submission by Aboriginal Peak Organisations NT, this proposal implies that the compliance framework may interfere with a person's ability to remain employed.¹³ On this basis, the compliance framework

⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 9.

¹⁰ Aboriginal Peak Organisations Northern Territory (2017, May), *'Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme'* (Report). Retrieved from <http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf>.

¹¹ Explanatory Memorandum, Social Security Legislation Amendment (Community Development Program) Bill 2018 (Cth), 9.

¹² Department of the Prime Minister and Cabinet, *The Community Development Programme (CDP)*, <<https://www.pmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp>>

¹³ Aboriginal Peak Organisations NT, *Submission to Senate Community Affairs Committee Social Security Legislation Amendment (Community Development Program) Bill 2018 (the CDP Bill)*, p4.

should not be applied to any person.

14. The Bill also proposes to subject participants who leave a subsidised position to a 6 month exclusion period before they can enter into another subsidised job. We understand that this is to increase opportunities for other CDP participants, given that only a maximum of 17% of participants will be placed in a subsidised position at any given time. In our view, there must be exceptions to any such proposal to take into account the circumstances that caused a person to cease their subsidised position.
15. While we support the inclusion of subsidised positions in the CDP, the scheme proposed in this Bill falls short at providing a longer term strategy to increase job opportunities in remote Australia. Most people on the CDP will be excluded from the subsidised roles due to the limited number of positions, and will remain in the CDP. We are concerned that even if there are employers able to support subsidised positions, they may not be in a position to continue to employ people beyond the two year period in which their roles are subsidised.

Assessments

16. We do welcome consideration of a flexible and holistic assessment model, where other agencies such as local health services, are involved to assess a person's capacity to participate in the CDP.¹⁴ This type of model will enhance the ability of employment providers to identify underlying issues for particular individuals, and facilitate these people to receive appropriate supports both within and outside of the employment services program. However, it is important that people have agency to determine what other services may be involved in their assessments and how information is shared.

Reduction in work hour requirements

17. Currently, CDP participants are required to complete up to 25 hours per week of mutual obligation activities. The Bill proposes to reduce these hours "to up to 20 hours per week, depending on a job seeker's assessed work capacity."¹⁵ Although we welcome the reduction in required weekly work hours, CDP participants will still be required to undertake more work hours than those on the jobactive program. For CDP participants, these work hours are required every week, however jobactive participants are only required to undertake job activity hours over a 6 month period.¹⁶ The CDP therefore continues to adversely discriminate against people living in remote Australia.
18. The NSSRN has held long-standing concerns over the effectiveness, and occupational health and safety, of Work for the Dole programs. In our view, mutual obligation activities, such as Work for the Dole, should not be compulsory, as they expose participants to exploitation and do not offer adequate work place protection. Our member centres have observed that many CDP participants have been forced into meaningless work,¹⁷ while others are made to undertake Work for the Dole activities that should be recognised as a proper job - many of these activities involve working alongside and performing similar tasks as a team of employed workers. As well as constituting free labour (and arguably meets the definition of modern slavery), this reduces the already limited pool of employment opportunities in remote areas.¹⁸
19. The NSSRN does not support any compulsory work for the dole activities, particularly in remote

14 Explanatory Memorandum, Social Security Legislation Amendment (Community Development Program) Bill 2018 (Cth), 3-4.

15 Explanatory Memorandum, Social Security Legislation Amendment (Community Development Program) Bill 2018 (Cth), 3

16 Department of Jobs and Small Business, *Work for the Dole*, Online, Last Updated 3 September 2013, <<http://www.jobs.gov.au/work-dole>>

17 Tomlin, Sam, 'Work-for-the-dole crime claim rejected by Indigenous Affairs Minister Nigel Scullion', ABC News (Online), 25 August 2017, <<http://www.abc.net.au/news/2017-08-25/indigenous-affairs-minister-rejects-cdp-crime-claims/8842190>>.

18 Jon Altman, 'Modern Slavery in Remote Australia – The Government's welfare reforms for Indigenous Australians look like slavery', Arena Magazine (17 October 2017), <<http://arena.org.au/modern-slavery-in-remote-australia-by-jon-altman/>>

Australia. Research has shown that Work for the Dole schemes do not increase the long term availability of jobs.¹⁹ No doubt, this is particularly so for remote Australia. It must be recognised that a key barrier to gaining employment is the lack of job opportunities in remote areas. The obligations placed on CDP participants should not be unrealistic or onerous, and any work performed to meet activity requirements should be treated as formal paid work, offering the same wages and workplace protections as regular work. Providing better training opportunities to people who have the support of adequate and unconditional unemployment payments is more likely to improve employment outcomes and the wellbeing of people on income support.

Targeted Compliance Framework

20. On 1 July 2018, the Targeted Compliance Framework (TCF) commenced for all non-remote recipients of unemployment payments who are subject to job activity requirements. The framework was introduced as part of the *Social Services Legislation Amendment (Welfare Reform) Act 2018*, however through legislative instrument CDP participants were exempted from the TCF (as 'declared program participants') and remained subject to the previous compliance system.
21. Schedule 1 of this Bill repeals the current compliance system for CDP participants under the *Social Security (Administration) Act 1999*. It also repeals their exemption from the TCF, with the exception of CDP participants who undertake subsidised employment. This means that from 1 February 2019 the Targeted Compliance Framework will apply to all CDP and jobactive participants, except for those CDP participants who are engaged in subsidised employment.
22. The Bill's Explanatory Memorandum argues that "[t]he TCF will ensure additional protections for all CDP participants" – inferring that the framework will address the staggering rate of penalties incurred under the current compliance system. Whilst the TCF does include some safe guards, the framework is married with an approach to compliance and penalties which is unfair and disproportionately harsh. It is not an adequate alternative to address the high level of financial penalties incurred under the current CDP system. We have provided a general overview of the TCF in the appendix of this submission.
23. The NSSRN was opposed to the introduction to the TCF for non-remote jobseekers. The TCF is based on a system of demerit points and includes payment suspensions for single activity failures, and harsh non-waivable penalties for persistent non-compliance. The most severe penalty is 4 weeks payment preclusion. This means that a person's income support payment is cancelled and they will not be eligible to re-claim payments until the 4 week preclusion period has passed. This penalty is applied to people considered to be persistently non-compliant. However, it is also applied to people who refuse to accept work, voluntarily leave a job, or are dismissed from work due to misconduct (with some limited exceptions). We are concerned that people experiencing crises, such as the onset of psychiatric mental illness or exposure to family violence, may struggle to remain engaged with their required job activities and lose access to income despite their vulnerabilities.
24. The more onerous requirements of the CDP has already played a role in the disproportionate application of penalties to CDP participants. Despite some relaxation of the CDP requirements, the program remains onerous and we are very concerned that many people on the CDP will quickly accumulate demerit points, putting them at risk of non-waivable financial penalties. This is especially concerning given the ongoing lack of discretion available to employment service providers and the limited options to challenge the issuing of a demerit point.²⁰

19 Australian National University's Social Research Centre, *Evaluation of Work for the Dole 2014-15*, November 2015, <https://docs.employment.gov.au/system/files/doc/other/evaluation_of_work_for_the_dole_2014-15_accessible_final.pdf>, v.

20 The ability to appeal demerit points decisions is very limited – currently, for jobactive participants, the only option is a complaint to the Department of Jobs and Small Business who contract to employment service providers. The issuing of demerit points are not decisions made under social security law, however they can interfere directly with a person's payment.

25. The Government has provided modelling that suggests during the first year of the TCF being applied to the new CDP model that over 4000 people will have their payments cancelled for 4 weeks, and in the second year this number will rise to over 6500 people.²¹ In our view, this represents significant numbers of people who will be penalised under the TCF. We understand that this data is based on old CDP penalty data from 2015-16, rather than the current penalty figures which are higher. We are concerned that TCF will actually result in higher penalties than anticipated.
26. In March 2018, it was reported that “[m]ore than 50,000 eight-week penalties have been imposed on about 15,000 CDP participants since mid-2015, although most of these have been fully-waived.”²² Our major concern with applying the TCF to CDP participants is that there is no option to waive these financial penalties for persistent non-compliance. This means that a significant number of participants will now be subject to payment cancellations as their personal and extenuating circumstances cannot be taken into consideration to waive the penalty.
27. For these reasons, the NSSRN does not support the application of the TCF to CDP participants. The inflexible penalties available under the TCF will continue to cause significant income losses, and may lead some to move completely off income support payments. Instead, we support a move away from penalties towards an incentive driven system where unconditional income support payments exist as a safety net for all people living in remote Australia.

Reasonable excuse

28. The Bill retains the option for CDP participants to access the reasonable excuse provisions available for drug or alcohol abuse.²³ This option was removed for jobseekers in non-remote areas as a result of the *Social Services Legislation Amendment (Welfare Reform) Act 2018*.
29. The NSSRN strongly supports this measure to retain drug and alcohol use as a reasonable excuse for CDP participants.

A better alternative

30. The NSSRN again encourages further consideration of the alternative CDP model, the *Fair Work and Strong Communities: Remote Development and Employment Scheme (RDES)*. The RDES aims to achieve sustainable change in remote communities by ensuring that Indigenous people have more meaningful control over their lives. The RDES is “place based, community driven, and establishes a framework for long term collaborative effort across governments, employers and Indigenous organisations to increase economic opportunities in remote communities.”²⁴ The proposal emphasises job creation, incentives to participate (rather than penalties) and recognises cultural priorities. The scheme would be managed by an independent Indigenous-led board with local governance bodies.
31. This will likely lead to greater engagement with the program and will assist in ensuring that the program benefits the community. Community involvement may also ensure flexibility in the program to allow jobseekers to participate in important social and cultural activities.

21 Explanatory Memorandum, Social Security Legislation Amendment (Community Development Program) Bill 2018 (Cth), 9.

22 Letter from Nigel Scullion, Minister for Indigenous Affairs, to Senator Scott Ryan, President of the Senate, 28 August 2018, Ref MC18-108865, http://parlinfo.aph.gov.au/parlInfo/download/publications/tables/papers/092eb26a-07f2-470d-bc2b-5fd063df30c1/upload_pdf/opd_targeted%20compliance%20framework.pdf;fileType=application%2Fpdf

23 The Government’s rationale behind retaining this is the “lack of availability of drug and alcohol rehabilitation services in remote Australia”. See Explanatory Memorandum, Social Security Legislation Amendment (Community Development Program) Bill 2018 (Cth), 5.

24 Aboriginal Peak Organisations Northern Territory, ‘Proposed Remote Development and Employment Scheme’, (Infographics, May 2017) <http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf>.

32. The proposals in this Bill do not adequately address some of the most concerning problems with the CDP. We continue to support the Fair Work and Strong Communities model as the preferred alternative to the current program. The alternative model:
- is incentive-based, rather than punitive,
 - promotes participation in meaningful, sustainable work which benefits the local community,
 - ensures safe working environments for participants,
 - provides for greater flexibility to take into account personal circumstances, such as family violence,
 - encourages participation in important social and cultural activities, and
 - recognises and aims to alleviate the various structural barriers to social and economic participation faced by remote communities, including high rates of illness and disability, lack of basic infrastructure, inadequate housing, limited access to technology, low rates of literacy and numeracy, and limited job opportunities.
33. For the reasons outlined in this submission, we urge the Committee to reject the Bill.

Contact for this submission

This submission was prepared by Joni Gear, Legal Project Officer.

To discuss this submission, please contact:

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Appendix: Overview of Targeted Compliance Framework

- The *Green Zone* is the first phase of the framework where all jobseekers are initially placed. If a person fails to meet their job activity requirements and does not have a reasonable excuse, they will receive a demerit point and enter the *Warning Zone*. A demerit point is assigned for each failure and is often attached to payment suspensions. Once the person reengages with their employment services provider the payment suspension will be lifted and they will be back-paid.
- If a person accrues 3 demerit points within 6 months, they will have to attend an interview with your Employment Service Provider to review why they are not meeting their activities. If a person has a valid reason relating to their ability to complete the activities, their employment pathway plan may be adjusted and their demerits points may be reset to zero. However in many cases the person will be asked to meet the activities as set out in their plan.
- If a person receives two more demerit points, and therefore has 5 demerit points within 6 months, they will have to attend an appointment with a Department of Human Services (DHS) officer to further review why they are not meeting their activities. This interview is another opportunity to see whether the person is able to complete their activities. In some cases, their employment pathway plan may be adjusted and their demerit points reset to zero. However in many cases the plan will not change.
- After this appointment with DHS, the person enters the *Penalty Zone* and any further failures result in financial penalties. The person will lose 50% of their income support payment for the first failure without reasonable excuse in the *Penalty Zone* (ie when the person gets 6 demerit points). They will lose 100% of their payment after a second failure without reasonable excuse in this *Penalty Zone*.
- If the person fails on a third occasion without reasonable excuse, their payment will be cancelled for 4 weeks. This cannot be waived.
- A person can only return to the *Green Zone* if they do not incur any other failure within a 3 month period.
- Throughout all phases, if a person refuses paid work, voluntarily leaves a job, or is dismissed for misconduct from a job, their payment will be cancelled for 4 weeks. This cannot be waived. However, if the person is a ParentsNext participant, this rule will not apply, as ParentsNext participants are not generally required to look for or accept paid work.