

Dissenting Report by the Australian Greens

1.1 The Australian Greens oppose the Social Security Legislation Amendment (Community Development Program) Bill 2018 (Bill).

1.2 The Australian Greens strongly believe that the Community Development Program (CDP) needs urgent reform and have been calling for reform for a long time. The tragedy here is that the Government is wasting the opportunity to develop a program that could make a meaningful difference to First Nations communities. The Government's proposed changes to CDP will not improve the program and are going to make life even harder for CDP participants.

1.3 The Bill supports the reforms announced in the 2018–19 Budget to CDP, a remote employment program. The suite of reforms includes:

- Expanding the Targeted Compliance Framework (TCF) to CDP regions;
- 6,000 subsidised jobs in remote Australia for CDP participants;
- A reduction in the maximum mutual obligation hours from up to 25 hours a week to up to 20 hours a week depending on a job seeker's assessed work capacity;
- A reduction in income reporting requirements to Centrelink for job seekers who have less than 15 hours a week of mutual obligation requirements; and
- An increased role for local health service providers, including the provision of evidence to the Department of Human Services when they are deciding whether or not to reduce a participant's mutual obligation hours.

1.4 The Bill, however, focuses on the expansion of the TCF, which came into effect on 1 July this year for urban and regional Australia, to CDP regions. It does this by repealing the provisions that currently exclude CDP participants from the TCF and by repealing the current compliance framework for CDP participants.

1.5 The Australian Greens opposed the TCF being established through the Social Services Legislation Amendment (Welfare Reform) Bill 2017 and we cannot support its rollout to CDP regions.

1.6 We are concerned with the Government's lack of acknowledgement of the differences between the mainstream programs (jobactive, Disability Employment Services and ParentsNext) and the CDP, and we do not consider the TCF as an appropriate approach for CDP.

1.7 In this regard, Mr Defteros, Policy Analyst, Jobs Australia, said at the hearing for this inquiry:

We think that the TCF is not tailored to the needs of remote communities...¹

1.8 Mr Hobday, Chief Executive Officer, RISE Ventures, said:

I don't think you can bring CDP into alignment with the other programs. We see it every single day, where you have to have the flexibility locally to deliver services. It's not the same as jobactive and it's not the same as disability employment.²

1.9 Mr Flanagan, General Manager Community Services, Arnhem Land Progress Aboriginal Corporation, said:

I think the board were also surprised that in the explanatory memorandum it seems like some of the motivation for the TCF being brought across is to bring equity or parity. They feel that a one-size-fits-all approach doesn't really do that when you take into context how unique the circumstances are in many of the regions in which CDP operates.³

1.10 It is difficult to see the validity of the parity argument given the significant difference between the Work for the Dole requirements for CDP participants and jobactive participants. The requirements for CDP participants are much harsher (see below).

1.11 We are also concerned that the TCF was not designed with CDP participants in mind as it was never supposed to apply to CDP regions; hence the current exemptions for CDP participants.

1.12 As Mr Paterson, Chief Executive Officer, Aboriginal Peak Organisations Northern Territory, said:

... the TCF is designed to make things easier for people who miss the occasional appointment or day or Work for the Dole, and to increase the level of punishment of those who do this more often. CDP participants are the only people in the income support system who have to attend Work for the Dole every day. They have to do more, so they miss more. Already they get more penalties than anyone else. The TCF is designed to increase penalties for people like them.⁴

1.13 The Bill does not fix the underlying issues with CDP that the Australian Greens have been consistently raising for the last few years; this was also highlighted by witnesses. Adrienne Walters, Senior Lawyer, Human Rights Law Centre, said:

This bill forms part of the government's CDP reforms, but it fails to address the key drivers of this over penalisation of Aboriginal people, who make up over 80 per cent of those covered by CDP. In particular, it retains

1 *Proof Committee Hansard*, p. 39.

2 *Proof Committee Hansard*, p. 10.

3 *Proof Committee Hansard*, p. 23.

4 *Proof Committee Hansard*, p. 13.

discriminatory and inflexible requirements that are not imposed on people under the jobactive program, most of whom are non-Indigenous. CDP and jobactive participants receive the same basic social security payment, but CDP participants have to work more hours and comply with more rigid program rules. This not only is racially discriminatory but also places them at greater risk of being penalised because they can't keep up with the rules. Even with the government's commitment to reduce work requirements from February 2019, CDP workers would still have to work 270 hours more per year and will still have inflexible daily participation requirements.⁵

1.14 Similarly, Ms Stobart, Solicitor, North Australian Aboriginal Justice Agency, said:

We don't see the causes for noncompliance being addressed. We see the current issues to be significantly a result of the barriers that our clients face to engaging with Centrelink along with the actual model of Centrelink, and we don't see those two areas being addressed within these reforms. All we're seeing is a new penalty framework that is only harsher than the current framework.⁶

1.15 The Government has commissioned an evaluation of the current CDP and the Department of the Prime Minister and Cabinet confirmed in their response to questions on notice taken at the hearing that it has been finalised.⁷ The Government should release the finalised evaluation of the current CDP program as a matter of urgency and allow time between its release and debate on this Bill. The fact that we are being asked to assess the Bill and the reforms more broadly when we have not yet seen the evaluation of the current CDP is unacceptable. The evaluation should be informing the next steps; we need to get the next iteration of CDP right.

1.16 The Bill also inserts a number of exemptions from the TCF for CDP participants who take up one of the 6,000 subsidised jobs the Government will partly fund.

1.17 Specifically, it:

- Exempts those in a subsidised job, who continue to receive an income support payment, from mutual obligation requirements;
- Introduces provisions to ensure those in a subsidised job do not incur mutual obligation failures, work refusal failures or unemployment failures; and
- Introduces provisions to ensure those who refuse a subsidised job do not incur a work refusal failure.

5 *Proof Committee Hansard*, p. 33.

6 *Proof Committee Hansard*, p. 37.

7 Department of the Prime Minister and Cabinet, answers to questions on notice, 21 September 2018 (received 5 October 2018).

1.18 The Australian Greens have serious concerns regarding the Government's attempt to connect the provision of subsidised jobs to the passage of this Bill through the Parliament. This is evidenced in the Minister's Second Reading Speech, which says:

Without this legislation, the Government will not be able to fully deliver the subsidised employment program as participants will still be subject to compliance under Social Security laws.⁸

1.19 This is a nonsense argument as the Government could introduce other amendments to exempt CDP participants who have taken up a subsidised job from the current compliance framework for CDP, without simultaneously subjecting CDP participants to the harsh TCF.

1.20 Our other concerns include the lack of consultation and detail available, the lack of discretion in the TCF and particularly for CDP participants, the higher number of penalties anticipated and the harshness of these penalties, the lack of jobs in CDP regions and the barriers CDP participants face. There is also a need for great consideration to be given to cultural and social factors.

1.21 These are each addressed in more detail below.

Lack of consultation and details about the reforms

1.22 This Government has consistently reiterated the need to consult with First Nations peoples about matters that affect them. Yet again, however, this Government has failed to follow through and properly consult on the reforms to the CDP and, more specifically, this Bill, which will disproportionately affect them.

1.23 Mr Little, Co-Chair, National Congress of Australia's First Peoples, said at the hearing:

... it is apparent that the First Peoples have not been duly involved in the crafting of bills or policy that affect them. Simple interpretation of consultation is insufficient from our perspective.⁹

1.24 Mrs Harvey, Chief Executive Officer, Tiwi Islands Training and Employment, Jobs Australia, said:

There's always an emphasis on people 'doing things with, not to', except it seems to be more of a cliché than something that gets lived out.¹⁰

1.25 Throughout the hearing a number of witnesses expressed their dismay at the lack of consultation that had taken place prior to the Government's Budget

8 Senator the Hon. Anne Ruston, Assistant Minister for Agriculture and Water Resources, *Senate Hansard*, 23 August 2018, p. 29.

9 *Proof Committee Hansard*, p. 23.

10 *Proof Committee Hansard*, p. 41.

announcement and the lack of consultation since the Budget announcement on the reforms and the Bill.

1.26 Specifically, Mr Paterson, Chief Executive Officer, Aboriginal Peak Organisations Northern Territory, said:

Since December 2016, we have been working with a national alliance of organisations trying to speak up for communities and trying to come up with positive alternatives to this broken, dysfunctional and punitive scheme. We put forward our proposals to government last year. We made a submission to the government CDP review and heard the government promise to consult about the program reform. We also heard them say that they would be leaving remote communities out of the new targeted compliance framework, or TCF, 'so that the government can work out, with communities, what will work best for remote Australia'. ... Well, we've been waiting in vain to have these discussions. Now we are here, having rushed down to Canberra, because of a government bill that was developed without our input and that we think will make things worse.¹¹

1.27 Mr Defteros, Policy Analyst, Jobs Australia, said:

The minister at the time described [TCF] in a speech at one of the provider forums as extremely draconian. There was a consultation workshop that was held with providers. There was very strong consensus in the room between government and providers that the TCF would be sort of catastrophic and that people would very rapidly progress towards the intensive compliance zone, as I think it was called at the time; it's now the penalty zone. There was a discussion paper on the future of remote employment and participation which was released last year in December, and there was no reference at all to that. So, when it came about in May, it was a total surprise to everybody. After that, yes, we had a number of questions, because there was a lack of detail, and we organised a teleconference with the department. They gave us answers that they could provide. Since then, there hasn't been a lot of engagement regarding the development of the TCF and its application to remote areas that's involved Jobs Australia. There hasn't been much involvement at all.¹²

1.28 Ms Fowkes, Centre for Aboriginal and Economic Policy Research, said:

Clearly, there was a budget announcement, and that said there would be consultation. And then we knew, when it appeared on the *Notice Paper* for the Senate, that there was going to be a bill. It was literally out of the blue that there was going to be a bill.¹³

1.29 Dr Douglas, Policy Officer, Central Land Council, said:

11 *Proof Committee Hansard*, p. 13.

12 *Proof Committee Hansard*, p. 42.

13 *Proof Committee Hansard*, p. 18.

I'm not aware of any consultation that's happened in Central Australia. I've been at two meetings with the minister, very brief meetings. That's not consultation. There's been little or no consultation. Who the minister and the departments have been consulting with is not clear. We've been calling for transparency and time frames around consultations. From a land council point of view—we caucus with the three other NT land councils—there's been very little consultation, if at all. There was one meeting with Minister Scullion before the Barunga meeting this year—... just in June—where there was a discussion about CDP, but it was extremely brief. That's not consultation.¹⁴

1.30 Following the hearing, it is difficult to understand how the Minister came to include the following sentence in his Budget media release:

Following an extensive consultation period of co-design with communities, the Coalition Government is announcing significant reforms to the Community Development Programme (CDP).¹⁵

1.31 The Australian Greens are of the view that consultation on the Bill and the broader reforms has been severely lacking and that the Government cannot claim that the reforms were co-designed in the true sense of this term. There is an urgent need for the Government to consult with First Nations peoples, peak bodies and CDP providers so that the reforms truly reflect their views. As Mr Paterson, Chief Executive Officer, Aboriginal Peak Organisations Northern Territory, said:

What is lacking with this new program is the inclusion of the Aboriginal leadership in this sector. Until we get to the stage where government genuinely engages with the Aboriginal leadership who have the expertise in this space, we're going to have a failed program.

The Aboriginal leadership is looking for engagement, active participation and genuine involvement in the co-design, co-development, implementation, monitoring and review of this whole program. I must say that it has been very disappointing under this current government that we've been left outside that whole process. This is evidenced by the top-down program and policy. This has all been designed somewhere here in Canberra and then forced down. It's one size fits all. There's no flexibility for local communities to design and develop the program.¹⁶

1.32 There were also numerous occasions during the hearing where witnesses mentioned the lack of available details or found it difficult to provide specific answers to questions asked by Committee members as the Department of the Prime Minister

14 *Proof Committee Hansard*, p. 18.

15 Senator the Hon. Nigel Scullion, Minister for Indigenous Affairs, '2018-19 Budget: Backing the economic aspirations of First Australians', *Media Release*, 8 May 2018, <https://ministers.pmc.gov.au/scullion/2018/2018-19-budget-backing-economic-aspirations-first-australians> (accessed 8 October 2018).

16 *Proof Committee Hansard*, pp. 16–17.

and Cabinet had not yet made a decision on the particular issue or had not yet communicated to the particular witness how an aspect of the reforms/Bill would operate. This made it difficult for some of the witnesses to provide an informed response to the Committee on the Bill and what it contains and the reforms more broadly.

1.33 During his opening statement, Mr Flanagan, General Manager Community Services, Arnhem Land Progress Aboriginal Corporation, said:

Without more information on exactly how the legislative amendment, if it came in, would be implemented at a policy level, the board feel like it's really difficult to make a decision on whether this would be a step forward or a step backwards.¹⁷

1.34 Mrs Harvey, Chief Executive Officer, Tiwi Islands Training and Employment, Jobs Australia, said:

There's not enough detail in anything that we've received to date to help us work out what the whole thing looks like. Every little action, whether it's compliance, a job placement or an exemption, causes a reaction for that person and also for your case load. Without the devil in the detail—without any of that—we can't give a committee like yourselves an informed response.¹⁸

1.35 Senator Siewert asked Mr Hobday, the Chief Executive Officer of RISE Ventures, whether he had been given any details of how the subsidised jobs would work and he responded:

No, not at a lot of detail. There was a conference, a get-together of CDP providers, in June this year, which the minister attended. There was a presentation on the targeted compliance framework. The department presented on their initial thoughts around how the subsidies would operate, and we are awaiting further detail now.¹⁹

1.36 Ms Fowkes, Centre for Aboriginal and Economic Policy Research, said:

One of the things that's really clear is how confusing this policy area is. I've been listening and everyone here is stumbling around trying to figure out what the TCF will mean. I think that is something the committee should consider when it considers the timing of this bill, because it feels like it is being rushed through, and its consequences are quite significant.²⁰

17 *Proof Committee Hansard*, p. 23.

18 *Proof Committee Hansard*, p. 45.

19 *Proof Committee Hansard*, p. 7.

20 *Proof Committee Hansard*, p. 14.

Lack of discretion in the TCF

1.37 The lack of discretion in the TCF takes two forms: the application of demerit points to individuals and the inability for penalties, once accrued, to be waived.

1.38 At the hearing witnesses expressed their understanding of the TCF in terms of how it currently applies to the mainstream programs in non-remote locations.

1.39 Regarding the application of demerit points to individuals, Mr Defteros, Policy Analyst, Jobs Australia, said:

I just want to make it clear that under the TCF the ability for providers to exercise discretion is removed. They're not able to make a determination not to use the compliance framework as the best way to engage someone. That is removed by the TCF. Under the TCF there's a list of valid reasons and a list of invalid reasons and you either fall on one side or the other. It's kind of like a drop-down system. So, there's not a lot of local input or discretion into the decisions that are being taken. If the person doesn't attend and they don't have a valid reason, according to this very prescriptive list the demerit is applied and they continue to accumulate in that way. So, I'm not sure that there is much more community or local input or discretion. There's actually less in the new model.²¹

1.40 Similarly, Ms Crowe, Senior Policy and Advocacy Officer, Australian Council of Social Service, said:

...there is less flexibility in [the TCF's] application. The key reason for that is discretion has been removed from the application of breaches or demerit points. Employment service providers have responsibility for applying the first four demerit points. They do not have discretion, so they cannot decide, 'Look, even though this person, on paper, does not have a reasonable excuse, I know that they're trying hard and I'm not going to apply this demerit point.' They must apply the demerit points where they believe that the person does not have a reasonable excuse. Our concern is that under the old program, where employment service providers did not have responsibility for applying breaches and, rather, would make recommendations to the Department of Human Services whether or not to apply a breach, they got those recommendations wrong 40 per cent to 50 per cent of the time.²²

1.41 Regarding the inability for penalties to be waived, Ms Crowe, Senior Policy and Advocacy Office, Australian Council of Social Service, said:

Even when someone is at risk of homelessness or is already in severe financial hardship, no waiver can be applied, unlike the current model operating under CDP where, if an eight-week penalty is applied, either it most often is waived or the person is able to effectively work off that

21 *Proof Committee Hansard*, p. 46.

22 *Proof Committee Hansard*, p. 4.

penalty by re-engaging with their employment service provider. The TCF model won't allow that. Our clear concern is that this could actually see people lose more income than under the current model and we could actually see people fall outside the system altogether because of the four-week cancellation penalty that will apply if you lose eight demerit points. That will obviously require someone to reapply for their income support payment, and we're deeply concerned that people won't do that or will do that some time after the four weeks has expired.²³

1.42 Adrienne Walters, Senior Lawyer, Human Rights Law Centre, said:

While there are considerable problems with the current compliance framework and the high rate of penalties, the TCF threatens to make things worse because of a lack of safeguards to protect people from administrative errors, because of one-, two- and four-week payment penalties that cannot be waived for serious financial hardship and because people will be cut off Centrelink altogether. The Parliamentary Joint Committee on Human Rights just yesterday expressed concern that the TCF is inconsistent with human rights, in particular because vulnerable people won't have the option of having a penalty waived for serious financial hardship. They could be left without money for food, rent, medicines and other basic life necessities for up to four weeks.²⁴

1.43 Mr Defteros, Policy Analyst, Jobs Australia, said:

We think that the TCF is going to remove the ability for people to have their penalties waived if they re-engage. We think there is a real risk there that people will be trapped indefinitely in a cycle of penalties, because they're going to have to be compliant for three months, once they hit the penalty zone, in order to get out of that cycle. We think that people should be able to have their penalties waived when they re-engage, as they are now. In fact, that is used by the minister at the moment as a defence of the current arrangements—that penalties can be waived.²⁵

1.44 Ms Hatami, Supervising Solicitor, Dhurrawang Aboriginal Human Rights, Canberra Community Law, National Social Security Rights Network, outlined the consequences of the lack of discretion when applying a penalty, saying:

When that waiver provision is removed, it means that the issues that inform people's lives and the hardships that people endure are overlooked, and, instead, people fall further and further into debt. When payments are cut off, that means your rent's not paid, your electricity's not paid and you can't pay for your children's uniforms or books. Those costs don't go away with time; they just add up. It's creating a situation where people are not just living in poverty but have significant debts which they can't afford, and these debts are being deducted from their Centrelink payments every

23 *Proof Committee Hansard*, p. 3.

24 *Proof Committee Hansard*, p. 33.

25 *Proof Committee Hansard*, p. 39.

fortnight. It's putting them further and further back where these provisions are not available.²⁶

1.45 Many witnesses expressed to the Committee their desire to know exactly how the TCF would be applied in CDP regions, acknowledging—as discussed above—that there are differences between mainstream programs and CDP.

1.46 Mr Hobday, Chief Executive Officer, RISE Ventures, a CDP provider, said:

One of the questions we've asked is: what flexibility or discretion will we be given in determining how we might apply the TCF?²⁷

1.47 He then said:

We haven't received that [information] yet.²⁸

1.48 Mr Flanagan, General Manager Community Services, Arnhem Land Progress Aboriginal Corporation, said:

...but, again, at this point they're not sure about the detail in what level of discretion is there, what flexibility and how the provider can work to support them through that process.²⁹

1.49 Mr Flanagan also said:

Conversations that we've had with the department and with the minister's office have certainly implied that we'll be in a position to take into account a broad range of social and economic impacts on people, such as overcrowding and cultural obligations, and that'll give us the ability to waive those three penalties, and they basically go back to the start in the green zone. I think it's going to be down to what breadth there is in the guidelines, what are recognised as reasonable excuses and how we're empowered to make those determinations case by case in our communities.³⁰

1.50 Senator McCarthy asked whether he had received information as to what the guidelines might allow for and he responded:

No. We're in an ongoing dialogue, but there's not solid advice on that currently.³¹

1.51 A real concern of some of the witnesses was the possibility of the TCF being applied in the same way it is to the mainstream programs.

26 *Proof Committee Hansard*, p. 4.

27 *Proof Committee Hansard*, p. 10.

28 *Proof Committee Hansard*, p. 11.

29 *Proof Committee Hansard*, p. 24.

30 *Proof Committee Hansard*, p. 30.

31 *Proof Committee Hansard*, p. 30.

1.52 Ms Weideman, Adviser, National Employment Services Association, said:

We agree that if that is the way it will be applied we would have concerns around that. We would hope through this process that there would be an opportunity to really influence what that does look like in remote Australia.³²

1.53 Since the hearing, the Department of the Prime Minister and Cabinet has provided answers to a number of questions taken on notice on the day. One of these answers indicates that the TCF removes the 'Did Not Attend Discretionary' option as one of the options for providers to record attendance in the IT system. That same answer says:

Providers will maintain the ability to exercise discretion in determining whether a job seeker has a valid reason for not meeting their requirements, and whether or not they had a reasonable excuse for not notifying their provider in advance if they could not attend.

If providers believe the job seeker legitimately could not attend, no demerit or failure will apply.³³

1.54 It is clear from another answer though that there are a limited number of reasons that can be accepted as valid with regards to why a job seeker did not attend their activity, appointment or job interview and 'that in all instances, the job seeker must not have been able to advise prior to the event that they could not attend'.³⁴ The exhaustive dot point list of valid reasons in the answer had 15 points. That same answer then goes on to say that:

Under the Guide to Social Security Law, there is also guidance about acceptable reasons for failure to give prior notice of an absence.³⁵

1.55 Again, there is a list provided, this time to demonstrate matters that could be considered acceptable reasons for failure to give prior notice of absence. The list only has four dot points.

1.56 The answer concludes:

In addition, the decision maker can apply discretion to interpret any factor included in the above list more broadly if the circumstances of the case warrant it.

32 *Proof Committee Hansard*, p. 46.

33 Department of the Prime Minister and Cabinet, answers to questions on notice, 21 September 2018 (received 5 October 2018).

34 Department of the Prime Minister and Cabinet, answers to questions on notice, 21 September 2018 (received 5 October 2018).

35 Department of the Prime Minister and Cabinet, answers to questions on notice, 21 September 2018 (received 5 October 2018).

1.57 While demerit decisions are not made under social security law, providers are expected to assess whether a demerit should apply using the same principles as those that underpin reasonable excuse decisions.³⁶

1.58 While the Department of the Prime Minister and Cabinet is suggesting providers will have discretion when applying demerits, it appears that discretion will be limited to determining whether the CDP participant has an acceptable reason for failure to give prior notice of an absence. There appears to be no discretion available for determining whether or not the job seeker had a valid reason for not attending.

1.59 The guidelines mentioned by at least one witness (see above) and the Department of the Prime Minister and Cabinet at the hearing³⁷ have not been provided.

1.60 There is also no mention of the penalties being waivable. The conclusion we are left to draw is that CDP participants will not be able to avoid any of the three possible penalties by reengaging with Work for the Dole activities. This means there is no way for participants to have their payments reinstated early if they have been penalised, and no way for participants to have the three penalties (one and two week payments suspensions and four week payment cancellation) waived.

Higher number of penalties anticipated and penalties harsher

1.61 It is anticipated that CDP participants will enter the penalty zone of the TCF much quicker than jobactive, ParentsNext and Disability Employment Services participants. This is because CDP participants are required to engage in Work for the Dole activities every week day from the moment they enter the program, unlike jobactive participants who have 12 months before they are subjected to Work for the Dole. CDP participants must also engage in these activities for 46 weeks of the year, whereas jobactive participants must only do so for six months of the year.

1.62 The penalties under the TCF are harsher as they are not waivable (see above) and because participants will be subjected to a four week payment cancellation if they reach eight demerit points, or they refuse to accept suitable work, choose to leave a job without a valid reason or are dismissed from their job due to misconduct. Following the four week payment cancellation, participants will have to reapply for a payment.

1.63 As Ms Crowe, Senior Policy and Advocacy Office, Australian Council of Social Service, said:

36 Department of the Prime Minister and Cabinet, answers to questions on notice, 21 September 2018 (received 5 October 2018).

37 Ms Bird, Assistant Secretary, Department of the Prime Minister and Cabinet, *Proof Committee Hansard*, p. 49.

In short, the more onerous conditions applied on people who are under the CDP mean that it's far more likely that they will fail to meet those obligations and that they will end up in the penalty zone much more rapidly than someone under jobactive.³⁸

1.64 Ms Fowkes, Centre for Aboriginal and Economic Policy Research, said:

The TCF is aimed at punishing people who miss obligations more often. Only CDP participants have an obligation every day. If you're in the mainstream system, your obligation for the first year is to look for work and to attend monthly appointments. So your ability to rack up penalties is much, much less and it will be a lot slower... The objective of the TCF is to make things harder for those people—that is, the people in the CDP—and, in fact, to eventually cancel their payments. The cancellation of payments, in the context of a program where people are walking away and the caseload is already declining is potentially devastating.³⁹

1.65 In her submission to the inquiry, Ms Fowkes says:

The Government's modelling suggests that, on a per capita basis, the TCF would have around four times the impact on CDP participants as on other job seekers⁴⁰

1.66 Ms Stobart, Solicitor, North Australian Aboriginal Justice Agency, said:

We have grave concerns about the targeted compliance framework, which is harsher than the current system. We expect that it will exacerbate harms experienced by those subject to CDP. For the reasons we have discussed, people in remote communities are likely to enter the penalty zone very quickly. Senators, this is what the TCF is likely to mean for our clients, who make up a significant portion of CDP participants: our clients are going to experience even greater financial hardship and live in deeper poverty. This is because they will face greater and harsher penalties. They may also disengage from income support altogether because reconnecting with payments or dealing with Centrelink may be difficult. We already see this happening in the current system. This means they will struggle to purchase essential items. Communities have already recorded a decrease in food sales under the current system. We may see spikes in family violence, criminal offending and children being removed because of protection concerns relating to failure to thrive and neglect. Aboriginal Territorians will continue to be discriminated against by virtue of their more oppressive obligations and the system's failure to take into account their circumstances, despite Aboriginal Territorians being the main stakeholder in this reform.⁴¹

38 *Proof Committee Hansard*, p. 5.

39 *Proof Committee Hansard*, p. 14.

40 Ms Lisa Fowkes, *Submission 3*, p. 11.

41 *Proof Committee Hansard*, pp. 34–35.

1.67 Mrs Murphy, Chief Executive Officer, Winun Ngari Aboriginal Corporation, said:

Some of our participants have already gone underground, so they have actually gone off the system and are not back on the system and have chosen not to come back on the system. We have already participants, Aboriginal people, that are not on the dole, at all, or on any benefits and that actually live off their family, which is creating hardship for them.⁴²

1.68 Reapplying for payments will be harder for individuals in remote areas. The National Aboriginal Community Controlled Health Organisation says in its submission:

This will be much more difficult for people in remote areas who may have language barriers, lack access to a phone or have underlying cognitive or health impairments and will likely mean that Aboriginal people in CDP regions will have less access to income support payments than other Australians.⁴³

1.69 Applying the TCF to CDP participants will worsen the current situation and see CDP participants facing penalties much quicker than mainstream program participants. The penalties under the TCF are harsher and it is likely that more participants will disengage from the income support system than is already occurring, placing further pressure on families.

Lack of jobs in CDP regions

1.70 When considering the Bill and the reforms to CDP, it is important to bear in mind that jobs are limited in many of the CDP regions.

1.71 As Ms Tomes, Workforce Development Coordinator, Regional Anangu Services Aboriginal Corporation, said:

...when talking about the labour market conditions in remote Australia, it's important to remember that in the remote areas like the APY Lands there are very few economic drivers in the economy or employment drivers in the economy. On the APY Lands, the only real private employers are the art centres and community stores, and a small amount of short-term project based employment around maintenance and roads. Unlike Top End remote communities, for example, there's no seasonal employment related to primary industries. There are no mining or wealth creation industries. In the main, economies on the lands are supported by government service delivery and welfare payments. The usual first employers found in non-remote communities, such as the large retail and grocery chains, cafes and hospitality outlets, don't exist. The types of jobs that most of us would have

42 *Proof Committee Hansard*, p. 28.

43 National Aboriginal Community Controlled Health Organisation, *Submission 20*, p. 3.

had at school or after school as entry points to the labour market don't exist.⁴⁴

1.72 The lack of jobs available was also raised in relation to the 6,000 subsidised jobs to be supported by the Government. There was concern that the subsidised jobs will not lead to local job creation. Specifically, Ms Crowe, Senior Policy and Advocacy Office, Australian Council of Social Service, said:

...to date, there is no specific requirement that would allow local organisations to take up those job subsidies and for the subsidies to be made available to all employers. The concern that ACOSS and others have is that local smaller organisations won't be able to take advantage of those subsidies, largely because they won't have sufficient income to supplement those subsidies over the two-year time frame.⁴⁵

1.73 There is a risk that the subsidies will go to employers that can already afford to hire individuals, as the subsidy for each position is a maximum of \$21,000 over the two years.

Barriers

1.74 Many witnesses raised the barriers CDP participants face. Some of the barriers include English being a participant's third or fourth language, the difficulty of accessing the Centrelink system, the lack of services in these regions, caring responsibilities, and cultural obligations. These barriers increase the difficulty CDP participants face engaging with CDP and complying with their mutual obligation hours and other requirements.

1.75 Ms Stobart, Solicitor, North Australian Aboriginal Justice Agency, said:

On our first point that our clients face barriers to engaging with the Centrelink system, we can list many examples that show access to Centrelink is difficult. For example, many remote communities in the NT do not have a Centrelink agent. Some remote communities do not even have mobile phone reception or internet access. Waiting times to speak to Centrelink on the phone can be hours. There are also communication difficulties. A large number of diverse, Aboriginal languages are spoken in the NT. Many people speak English as a second, third or fourth language. There are low rates of English literacy and numeracy. There have also been frequent changes to the remote Work for the Dole system. We see very limited understanding of how CDP operates. For example, we have clients who do not know that their payments could be reduced or suspended if they do not attend activities, clients who do not know what their obligations are and others who do not know what reasons for missing activities are considered valid. There are high rates of illness and disability in remote communities. Many clients have significant caring responsibilities. Our

44 *Proof Committee Hansard*, p. 25.

45 *Proof Committee Hansard*, p. 3.

clients often have cultural obligations that arise, such as attending ceremonies, attending funerals and participating in sorry business. Senators, these challenges must be considered in any legislation that impacts on Centrelink benefits.⁴⁶

1.76 Ms Hatami, Supervising Solicitor, Dhurrawang Aboriginal Human Rights, Canberra Community Law, National Social Security Rights Network, said in her opening statement at the hearing that:

Participants from remote communities often have limited English literacy and don't have English as a first language. Our partner organisations working with clients who have had penalties imposed and payments suspended under this regime report that providers do not regularly use interpreters. Clients simply do not understand how the compliance and penalty framework operates.⁴⁷

1.77 Ms Tomes, Workforce Development Coordinator, Regional Anangu Services Aboriginal Corporation, said:

Most of the basic assumptions about daily life and social conditions of CDP participants that unconsciously sit behind the compliance framework are challenged in remote areas. For example, basic assumptions around the availability of Centrelink offices and services, comprehensive health service, banks, household mail services, post offices, phones, internet, adequate housing and sleeping arrangements, and even shopping and transport, to name a few, don't stand up. Similarly, assumptions around English language literacy and the lack of understanding around the very complex social and cultural norms in remote areas mean that standard compliance requirements can become onerous for Indigenous welfare recipients in communities such as the APY Lands. These factors contribute to increased levels of noncompliance in remote communities. In our experience, the majority of noncompliance is not wilful, but rather often reflects the impacts of multiple challenges and barriers that individuals face.⁴⁸

1.78 Further, she said:

In addition, we have concerns that the demerits system may be difficult for participants to understand and monitor. It appears that there's a need for participants to actively use the dashboard via jobactive, or maybe a CDP website or app. This presents a major barrier to participants in our area as English is a second, third or fourth language, and the use of mobile apps is limited, considering that mobile coverage has only been rolled out on the

46 *Proof Committee Hansard*, p. 34.

47 *Proof Committee Hansard*, p. 2.

48 *Proof Committee Hansard*, p. 25.

APY Lands this year, and there are still many areas and homelands without coverage.⁴⁹

1.79 Ms Tomes, Workforce Development Coordinator, Regional Anangu Services Aboriginal Corporation, also said:

In addition, Centrelink remote assessment services operate on an infrequent visiting basis only on the lands, often with only a few weeks' notice and limited capacity to see all CDP participants who require assessment. The proper assessment of CDP participants' capacity therefore remains a significant challenge for CDP operations on the lands. The lack of appropriate and adequate capacity assessments can contribute to participants having more onerous mutual obligation requirements imposed on them than they should have and therefore a higher propensity to have a pattern of noncompliance, resulting in financial penalties.⁵⁰

1.80 The Government needs to ensure it is doing all it can to address these barriers and ensure that they do not further disadvantage CDP participants and lead to greater non-compliance and penalties. The Government must also ensure that it is not creating additional barriers for CDP participants. It must ensure that interpreters are available to all CDP participants as and when they are needed, that participants are not limited to certain forms of communication with Centrelink and that sufficient Centrelink services are available within CDP regions.

Cultural and social factors

1.81 Cultural and social factors need to be given proper consideration in any reforms to CDP. Particularly, cultural obligations many CDP participants have.

1.82 Mrs Harvey, Chief Executive Officer, Tiwi Islands Training and Employment, Jobs Australia, said:

I think that sometimes there isn't enough emphasis on the mortality rate in remote areas and the value system in which it has to be lived out. Whether it's in black and white or not, a lot of people do have an obligation to take time out, in particular for sorry business.⁵¹

1.83 Mr Flanagan, General Manager Community Services, Arnhem Land Progress Aboriginal Corporation, said:

... there should be increased respect and recognition of traditional values and cultures. [The Board] see that that's something that's been thought about in the policy and design, but they still think that, at times, there's some mystification around that and a lack of understanding. They think that, again, more flexibility and perhaps an opportunity to rely more on

49 *Proof Committee Hansard*, p. 26.

50 *Proof Committee Hansard*, p. 26.

51 *Proof Committee Hansard*, p. 41.

local traditional governance structures and for them to have a loud voice in implementation could address that.⁵²

1.84 One suggestion proposed at the hearing was a modification to allow CDP participants flexibility as to when they complete their Work for the Dole activities within a period of time i.e. two weeks. This would provide CDP participants with more control and allow them to partake in cultural activities without necessarily incurring penalties.

Alternative

1.85 An alternative approach to the Government's proposed reforms and this Bill is the Fair Work and Strong Communities: Remote Development and Employment Scheme model initially developed by Aboriginal Peak Organisations Northern Territory. This was raised by a few of the witnesses at the hearing and endorsed by some.

1.86 Mr Derrig, Senior Solicitor, North Australian Aboriginal Justice Agency, provided the Committee with a detailed explanation of the model in his opening statement after identifying the questions that need to be answered in relation to the subsidised jobs. He said:

The issues are, however, that due to the lack of detail there are some questions that need to be answered. Those are: With this program how will jobseekers maintain their employment after the two years? How will this bill ensure that positions go to communities that need it? How will jobs go to people suffering from disabilities and youth—that is, other jobseekers with greater barriers to employment—and not just people who are the most employable per se? How will the subsidised positions be set up so that the subsidies and the benefits of those subsidies aren't absorbed by larger, non-Indigenous organisations?

To be brief, the overall point is that there is a way this can be achieved. That's if the subsidised positions are rolled out in the way that APO NT has previously provided under its alternative model to CDP. The reason we believe this will work is APO NT proposes that an investment fund be created that would fund local Indigenous organisations to provide services to strengthen economic, social and cultural aspects of the community, similar to the way that the old CDEP was able to do, and to generate the night patrol industry as well as Indigenous rangers. These kinds of projects will create new opportunities for longer-term employment and not just for the life span of those two years currently forecast. They will also ensure that poorer and smaller communities can be appropriately prioritised for these subsidies. Further, by funding projects of local Indigenous corporations the benefits will stay entirely within the community.

The other major aspect of APO NT's model is that it proposes a reform to the CDP providers to become remote job centres, where there would be a

52 *Proof Committee Hansard*, p. 24.

major emphasis on case management. Currently, case management does not exist in the CDP; however, it is notably available for people under the Work for Dole program. Case management would be particularly helpful in ensuring that people in the subsidised jobs maintain their positions and would also help them transition out of subsidised positions into regular employment. It will also ensure that these jobseekers with additional barriers such as disabilities and youth are able to take advantage of these subsidised positions and eventually also get into regular employment, ensuring that the jobs do not just go to people who happen to be the most employable people.

Additionally, the beauty of the APO NT model is that it is a system designed by Aboriginal organisations which creates a framework to empower local Indigenous people to better develop their labour markets. APO NT consulted widely through communities and organisations to develop this model and, by adopting this model, this parliament has the opportunity to maximise the value of the 6,000 positions and empower remote Aboriginal people to exercise their right to self-determination. That's my point on that point.⁵³

1.87 The Australian Greens support this type of model and want to see the Government engage in genuine discussions with First Nations peoples and organisations about this approach as an alternative to the Government's announced reforms and this Bill.

Recommendation 1

1.88 The Bill be opposed.

Recommendation 2

1.89 The Government urgently release the finalised evaluation of the current CDP. If the Government intends to proceed with debate on this Bill it should not occur before the evaluation has been released.

Recommendation 3

1.90 The Government urgently work with First Nations organisations and peoples, particularly those who are CDP participants to develop a suitable alternative to the current CDP. The Fair Work and Strong Communities: Remote Development and Employment Scheme model initially developed by Aboriginal Peak Organisations Northern Territory should be the starting point of this work.

53 *Proof Committee Hansard*, pp. 35–36.

Senator Rachel Siewert
Deputy Chair