The Senate

Finance and Public Administration Legislation Committee

Social Security Legislation Amendment (Community Development Program) Bill 2015

March 2016

ISBN 978-1-76010-381-1

Senate Finance and Public Administration Committee Secretariat:

Ms Lyn Beverley (Secretary)

Ms Ann Palmer (Principal Research Officer)

Ms Sarah Brasser (Administrative Officer)

The Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3530
Fax: 02 6277 5809
E-mail: fpa.sen@aph.gov.au
Internet: www.aph.gov.au/senate_fpa

Printed by the Senate Printing Unit, Parliament House, Canberra.

Membership of the Committee

Members

Senator Cory Bernardi (Chair)	LP, SA
Senator Jenny McAllister (Deputy Chair)	ALP, NSW
Senator Joanna Lindgren (from 23.02.2016)	LP. QLD
Senator Bridget McKenzie	NAT, VIC
Senator Janet Rice	AG, VIC
Senator Nova Peris	ALP, NT
Senator Dean Smith (until 23.02.2016)	LP, WA
	AG, VIC

Substitute Member

Senator Rachel Siewert	AG, WA

Participating Member

Senator Claire Moore	ALP, QLD

Table of Contents

Membership of the Committee ..... **iii**

Chapter 1 ..... **1**

Introduction **1**

Referral 1

Purpose of the bill 1

Conduct of the inquiry 1

Context of the bill 1

Key provisions of the Bill 3

Chapter 2 ..... **7**

Key issues and committee view **7**

Lack of consultation 7

Ministerial determinations 8

Remote income support scheme may be discriminatory 14

Committee view 15

Labor Senators' Dissenting Report **17**

Lack of consultation with communities and providers 17

Breadth of Ministerial discretion 18

Parliamentary scrutiny 20

Importance of access to social security safety net and safeguards 21

Transfer of responsibilities to CDP providers 22

Taper rates 24

Human rights compatibility and indirect discrimination 25

Conclusion 26

Australian Greens Dissenting Report **27**

Introduction 27

Reporting date 27

Consultation 28

Differences from CDEP 29

Discrimination 31

Fundamental change to social security 32

Shift from the Department of Human Services to providers 33
Decisions made by services providers, not the Department of Human Services . 34
Appeals process 35
Employment conditions 36
Incentives for applying penalties 37
The Community Investment Fund 38
Patronage 38
Concerns about the safety of provider employees 39
Conclusion 39

APPENDIX 1 41

Submissions and additional information received by the committee 41

Submissions 41
Answers to Questions taken on Notice 42

APPENDIX 2 43

Public hearing 43

Chapter 1
Introduction

Referral

1.1 On 2 December 2015, the Social Security Legislation Amendment (Community Development Program) Bill 2015 (the bill) was introduced into the Senate by the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion.[1]

1.2 On 3 December 2015, pursuant to the Selection of Bills report, the Senate referred the bill to the Senate Finance and Public Administration Legislation Committee (committee) for inquiry and report by 29 February 2016.[2]

Purpose of the bill

1.3 The bill seeks to amend the *Social Security Act 1991* (Social Security Act) and the *Social Security (Administration) Act 1999* (Administration Act) to:

> [S]trengthen incentives for job seekers in remote Australia to actively engage with their income support activity requirements and provide greater opportunities to participate and remain in paid work.[3]

Conduct of the inquiry

1.4 Details of the inquiry, including links to the bill and associated documents, were placed on the committee's website at www.aph.gov.au/senate_fpa.

1.5 The committee directly contacted a number of relevant organisations and individuals to notify them of the inquiry and invite submissions by 29 January 2016. Submissions received by the committee are listed at Appendix 1.

1.6 The committee held a public hearing in Melbourne on 19 February 2016. A list of the witnesses who gave evidence at the public hearing is available at Appendix 2. The Hansard transcript may be accessed through the committee's website.

Context of the bill

1.7 The Explanatory Memorandum (EM) states:

> Welfare reliance is at its most concentrated in remote Australian communities. In very remote areas, almost one in five adults of workforce age are in receipt of income support payments. People in remote Australia are moving onto welfare at a young age and staying there for life. Very few people are transitioning into full time paid employment.
>
> Long term welfare reliance on this scale is detrimental to individuals and to communities.[4]

---

1 *Journals of the Senate*, No. 133, 2 December 2015, pp 3585-3586.

2 *Journals of the Senate*, No. 134, 3 December 2015, pp 3624-3625.

3 EM, General Outline.

1.8 According to the EM, the Community Development Program (CDP), introduced on 1 July 2015, addresses this problem:

> [CDP] assists people to gain the skills, experience and commitment necessary to find paid work where it exists and enables them to contribute meaningfully to their community in the absence of paid work, through participation in continuous CDP activities. CDP includes employment incentives, incentives to establish businesses and access to vocational training and support to address pre-employment barriers such as drug and alcohol problems.[5]

1.9 Under the CDP, all adults between 18 and 49 years who are not in work or study are required to undertake work-like activities for up to 25 hours per week, depending on their assessed capacity to work.[6]

1.10 Notwithstanding the introduction of the CDP to address welfare reliance, the EM notes:

> [O]utcomes suggest that current incentives within the income support system need to be stronger for those in remote communities to drive the behavioural changes needed to get people active, off welfare and into work.[7]

1.11 In particular, the EM states that the national job seeker compliance framework, which applies financial penalties and suspensions for missing appointments and activities, is complex and difficult for remote job seekers to understand.[8] The EM explains that the consequence of not attending activities (No Show No Pay penalties) are not immediately felt, with long periods of up to five weeks or more before penalties are applied:

> For many remote job seekers the penalty feels arbitrary and not connected to their behaviour. As a result, behaviour is not changing.
>
> The CDP caseload, while representing only five per cent of all job seekers, currently accounts for over 60 per cent of all reported No Show No Pay failures. Despite this, attendance in CDP activities remains low. In addition, current settings are not geared to readily support job seekers to seamlessly move in and out of intermittent work which is often the only type of work available in remote Australia.
>
> To address these issues, the Bill introduces more direct and immediate payment and compliance arrangements that will allow job seekers to easily

---

4 EM, General Outline.

5 EM, General Outline. The CDP replaced the Remote Jobs and Communities Program (RJCP).

6 Information Sheet, *Information Sheet: Reforming the Remote Jobs and Communities Programme*, p. 1. Available at: http://www.dpmc.gov.au/sites/default/files/publications/RJCP%20Reforms%20-%20Information%20Sheet_1.pdf (accessed 11 February 2016).

7 EM, General Outline.

8 EM, General Outline.

> understand and comply with their requirements and avoid financial penalties – and provides additional incentives to work by increasing the amount an individual can earn before their income support payment starts to reduce under the income test. The amount of income support a jobseeker receives will depend on their participation in CDP activities rather than complex thresholds and taper rates.[9]

Key provisions of the Bill

Remote income support payments

1.12 The bill would insert a new Part 2.28 into the Social Security Act to provide for the payment of remote income support payments by CDP providers.[10] In summary:

> Division 1 of Part 2.28 provides for the payment of remote income support payments (that is disability support pension, parenting payment, youth allowance, newstart allowance or special benefit) to remote income support recipients by Providers, rather than by the Department of Human Services [DHS] as is currently the case.[11]

1.13 The EM describes the roles of CDP providers and DHS, as envisaged under the proposals in the bill:

> Income support payments…for remote job seekers will be made weekly by [CDP] Providers, instead of [DHS] making payments each fortnight under current arrangements. Providers will be based in remote regions and be accessible and able to make payments to individuals.
>
> Responsibility for receiving, processing and determining claims for a job seeker's payment (as well as assessing eligibility, payability and capacity to work) will remain with [DHS] as is currently the case. Eligibility for income support, the level of income support and the level of activity requirements will remain unchanged. [DHS] will continue to fully administer other payments such as Family Tax Benefit and income management.[12]

1.14 In order for a person to receive a remote income support payment they must meet certain conditions relating to participation requirements and activity tests.[13]

---

9 EM, General Outline.

10 See Item 25 of Schedule 1, which would insert Proposed Part 2.28 'Remote income support payments' into the *Social Security Act 1991* (Social Security Act). Item 1 of Schedule 1 would insert a definition of 'Community Development Program provider' into the Social Security Act. Item 3 of Schedule 1 of the bill inserts a definition of 'remote income support payment' into the Social Security Act. A 'remote income support payment' means: a) disability support pension; or b) parenting payment; or c) youth allowance; or d) newstart allowance; or e) special benefit.

11 EM, p. 14.

12 EM, p. 7.

13 Proposed subsection 1061ZAAX(2).

There are different conditions which apply, depending on the type of income support payment which is relevant in the circumstances.[14]

Ministerial determinations

1.15 Although the EM states that the bill will set up a new obligation and compliance regime, the detail of this regime is to be determined by the Minister through legislative instruments.

Determination of remote income support regions

1.16 The bill would insert a provision in the Social Security Act to allow the Minister to make a legislative instrument determining that a specified region in Australia is a 'remote income support region'.[15] In making a determination about a 'remote income support region', the Minister must consider the following:

- whether the region is remote;
- the level of social and economic disadvantage within the region, including the levels of unemployment, social welfare and education of persons living in the region; and
- whether there is likely to be a CDP provider capable of providing remote income support payments to persons residing in the region.[16]

1.17 The EM, noting the matters that the Minister must have regard to, states:

> The intention is that these arrangements will be carefully phased in based on community and Provider willingness and readiness.[17]

Determination of scheme for remote income support recipients

1.18 The bill would also insert into the Social Security Act provision for the Minister to determine, by legislative instrument, a scheme for the imposition of obligations on remote income support recipients and ensuring compliance with those obligations.[18]

1.19 A lengthy, but not exhaustive, list of matters which may be included in the Minister's determination of the scheme is also included in the proposed amendments.[19] Those matters include:

- obligations of remote income support recipients;
- circumstances in which a person will be exempt from those obligations;

---

14 EM, p. 16.

15 Proposed subsection 1061ZAAZ(1).

16 Proposed subsection 1061ZAAZ(2).

17 EM, p. 4.

18 Proposed subsection 1061ZAAZA(1). Item 3 of Schedule 1 of the bill inserts a definition of 'remote income support recipient'.

19 Proposed subsection 1061ZAAZA(2).

- the determination of reasonable excuses for failing to comply with obligations;
- the functions, duties and powers of employees and officers of Providers under the scheme; and
- review of decisions of employees or officers under the scheme.[20]

1.20 The Minister's determination of a scheme can also include the consequences for remote income support recipients who do not comply with obligations:

> Consequences will include the deduction of penalty amounts to remote income support payments where a remote income support recipient fails to comply with their obligations under the scheme and the method for calculating those penalties.[21]

1.21 Determinations about a scheme can be varied or revoked by the Minister at any time.[22]

1.22 The bill also provides that a person is not taken to be a worker or employee for the purposes of various Commonwealth Acts, including the *Work Health and Safety Act 2011* and the *Safety, Rehabilitation and Compensation Act 1988* merely by undertaking an activity in accordance with an obligation imposed under the determination.[23]

1.23 The EM provides some details on the job seeker compliance arrangements which are anticipated to be part of the Minister's determination:

> Providers will be able to apply a financial penalty to each job seeker for every day they do not attend activities unless there is a reasonable excuse. These arrangements will be implemented through a legislative instrument.
>
> In practice, the instrument will enable the application of penalties on a weekly basis and the maximum daily penalty will be equivalent to a day's remote income support payment. However, there will be greater flexibility within this maximum penalty. That is that penalties will not be limited to a full day but instead will allow Providers to reduce an hour's payment for an hour's non-attendance – lessening the financial burden on the job seeker while maintaining the behavioural impact. This will strengthen the link between attending activities and receiving income support. The instrument will also provide arrangements to ensure job seekers with a reasonable excuse for not attending an activity, such as illness, are not penalised, as is currently the case.[24]

---

20 See proposed paragraphs 1061ZAAZA(2)(a), (b), (d), (f) and (g), respectively.

21 EM, p. 20.

22 Proposed subsection 1061ZAAZA(3).

23 Proposed subsection 1061ZAAZA(4).

24 EM, p. 8.

Modification of Social Security law

1.24 The bill would amend the Social Security Act to insert a provision which would allow the Minister, by legislative instrument, to determine that the social security law 'has effect, in relation to remote income support payments to remote income support recipients, with any modifications that are prescribed'.[25]

1.25 The EM states that the main purpose of this provision is:

> [T]o enable the Minister to address any unforeseen or unintended consequences of the highly complex interactions between a determination [about a scheme for remote income support recipients] and the social security law as amended that may arise at a later date.[26]

New income thresholds

1.26 The bill also provides for an increase to the income thresholds, and taper rates before a support payment is reduced, for individuals receiving remote area support payments.[27]

1.27 The EM outlines the reason for the increase to income thresholds:

> While full time work is always the goal, the reality in remote Australia is that casual and intermittent work are more common and there are few opportunities for full time work. Currently short term work is often done by people flown in – at significant cost. To increase incentives for local people to take up available work, these new measures would allow job seekers in remote income support regions to earn more income before their income support reduces.[28]

1.28 The EM also explains the impact of a person attending paid employment in lieu of their CDP activities:

> If a job seeker undertakes paid work instead of attending their CDP activities, they would receive less income support (as penalties are applied) and receive more real income. With low complexity in the system, job seekers will be able to seamlessly move between CDP activities and intermittent and casual employment building their employment skills and experience. It is anticipated that this will help them to ultimately secure sufficient work to exit the income support system.[29]

---

25 Proposed section 1061ZAAZC. The Minister's determination on social security law pursuant to proposed section 1061ZAAZC may be part of a determination about a scheme for remote income support recipients under proposed new section 1061ZAAZA.

26 EM, p. 22.

27 See Items 26-44 of Schedule 1.

28 EM, pp 8-9.

29 EM, p. 9.

Chapter 2

Key issues and committee view

2.1 This chapter of the report discusses three key issues raised during the inquiry:

- the lack of consultation with communities, CDP providers and other stakeholders prior to the introduction of the bill;
- concerns in relation to the provisions in the bill for substantial matters in relation to the CDP to be dealt with through legislative instruments; and
- whether the remote income support scheme is discriminatory.

Lack of consultation

2.2 One of the themes in submissions and in evidence at the public hearing was frustration at the lack of consultation with communities and CDP providers prior to the introduction of the bill. Jobs Australia, the national peak body for non-profit organisations that assist unemployed people to prepare for and find employment, has approximately 20 CDP providers as members. In its submission, Jobs Australia stated:

> [T]o date, there has been no formal consultation on any aspect of the CDP arrangements. To the extent that consultation has occurred, it has been limited to discussions with some individual communities and individual CDP providers. Of the 31 provider staff who dialled in to Jobs Australia's teleconference consultation on the Bill, none had been consulted on any aspect of this Bill before it was introduced in December, nor were they aware of any such consultation having taken place.[1]

2.3 The lack of consultation was also reflected in the submissions and evidence of individual CDP providers. The Tangentyere Council Aboriginal Corporation, a CDP provider who provides services in the Town Camps of Alice Springs, stated:

> We were surprised that the tabling of the Bill in December was the first opportunity for CDP providers to receive notice of the significant changes proposed for the program that we administer. To our knowledge, there has been no consultation with the Town Camp communities in our region about these proposals, and the lack of genuine engagement with Aboriginal job seekers is of great concern.[2]

2.4 Mr Dickie Bedford, Chief Executive Officer of the Marra Worra Worra Aboriginal Corporation, based in Fitzroy Crossing in Western Australia, described the consultation so far regarding the reforms in the bill as 'ad hoc' and lacking in substance and detail.[3]

---

1 *Submission 11*, p. 5.

2 *Submission 10*, p. 2. See also Tiwi Island Training and Employment Board, *Submission 4*, p. 1; Campbell Page, *Submission 12*, p. 1; Central Land Council, *Submission 25*, p. 6.

3 *Proof Committee Hansard*, 19 February 2016, p. 39.

2.5 In its submission the Department of the Prime Minister and Cabinet (PM&C or department) indicated that the Minister and the department have met with providers in a number of states and the Northern Territory to explain the model proposed. PM&C's submission also referred to a two day meeting in Cairns with all providers in February 2016 which 'will include initial consultation and discussion of the proposed reforms and will provide an opportunity for the department and providers to work together to ensure the successful continuation of current CDP arrangements'.[4]

2.6 At the public hearing in Melbourne, Mr Richard Eccles, Deputy Secretary, Indigenous Affairs, PM&C, asserted that there had been ongoing consultation on the reforms in the bill, and the measures proposed in the legislative instruments to be made pursuant to the bill, for a considerable period of time:

> Consultation with the providers has been by any judgement quite comprehensive, going back more than a year. There have been meetings and discussions at quite some level of detail with individual providers but there has also been collectively an opportunity for providers to gather on at least four occasions as a group to work with us, to workshop some of the issues we are discussing and work a way forward.[5]

2.7 Noting that CDP did not commence until 1 July 2015, the committee sought to clarify whether earlier consultations had involved broader issues surrounding the change from the earlier Remote Jobs and Communities Program to the CDP. However, Mr Eccles was confident that:

> [I]t would have been [in March 2015] or not long after that we, on behalf of the government, outlined the ambition or the intention to pursue more fundamental reforms, which had those things that are at the very basis of this: weekly payments, because that is what communities are telling us would be most useful for them.[6]

Ministerial determinations

2.8 The fact that significant details regarding the activity and compliance regime for remote income support recipients will be contained in Ministerial determinations was the subject of much consternation in submissions. In particular, concerns centred around:

- the lack of parliamentary scrutiny for delegated legislation, such as the Minister's determinations; and
- the level and nature of consultation which would occur prior to the Minister making a determination.

4 *Submission 9*, p. 10.

5 *Proof Committee Hansard*, 19 February 2016, p. 48.

6 *Proof Committee Hansard*, 19 February 2016, p. 51.

Parliamentary scrutiny

2.9 The Central Land Council, among others, expressed concern that the bill 'vests an inappropriate level of power in the responsible Minister thereby avoiding critical Parliamentary scrutiny of social security laws'.[7] The Aboriginal Peak Organisations Northern Territory (APONT) argued:

> Social security law is a core responsibility of the Australian Government and delegation of critical decisions to one Minister would undermine the fundamental responsibility of the Parliament to hold the Government to account.[8]

2.10 The Welfare Rights Centre emphasise the extent of the Minister's powers pursuant to the bill:

> The effect of [the Ministerial determinations] is concerning: it will empower a Minister to make new rules without any recourse to the Parliament.
>
> Under these powers the Minister (and any future Minister) could change anything without prior approval from the Parliament. Legislative instruments are, of course, disallowable, but this is an inferior standard of Parliamentary scrutiny than that which applies to legislation. Providing social security payments to people in need of support is a fundamental area of Government responsibility.
>
> To delegate such extensive powers to one Minister is a fundamental abrogation of the Parliament's responsibility which should hold the Government of the day to account.[9]

2.11 In its submission PM&C addressed this concern, noting:

> The Bill will not reduce the level of Parliamentary oversight in relation to the social security law or the protections that this provides to job seekers. Compliance arrangements will be determined in a legislative instrument subject to the usual rules for possible disallowance by either House of Parliament. In relation to the determination of remote income support regions, the Minister must consider service provider capacity and fulfil the consultation requirements under the Legislative Instruments Act before the relevant legislative instrument is made. Again, this instrument would be subject to disallowance by either House of Parliament.[10]

2.12 At the public hearing Ms Nadine Williams, First Assistant Secretary, Community and Economic Development, PM&C, reiterated these checks on the Minister's power pursuant to the bill:

---

7 *Submission 25*, p. 2.

8 *Submission 23*, p. 8.

9 *Submission 26*, p. 8.

10 *Submission 9*, p. 3.

> The compliance arrangements will be set out in a disallowable instrument. There are quite significant checks and balances via the parliament, as part of that process. The ability for the minister to also trigger a region, so to include a region in the scheme or not, is governed by those disallowable instruments and, again, the parliamentary scrutiny that comes with that. As you mentioned, obviously the consultation arrangements around those sorts of instruments are fairly robust.[11]

Comments by the Scrutiny of Bills Committee

2.13 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) commented on the central elements of the scheme being determined by legislative instrument. The Scrutiny of Bills Committee noted that the EM contains 'a detailed justification of the need for differentiated CDP arrangements in remote communities'.[12] The Scrutiny of Bills Committee concluded:

> While these matters are very significant and may be considered more suitable for Parliamentary enactment, in light of the detailed explanation provided the committee draws this matter to the attention of Senators, but leaves the general question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.[13]

2.14 The Scrutiny of Bills Committee has, given the importance of the issues involved, sought advice from the Minister as to whether consideration can be given to including a reporting requirement to evaluate:

(a) the operation of the scheme; and

(b) the appropriateness of the use of delegated legislation (to be tabled in Parliament to facilitate parliamentary scrutiny).[14]

Consultation

2.15 The nature and extent of consultation that would be undertaken with communities and CDP providers prior to the Minister making a determination about a region was also identified by some organisations as a matter of concern. For example, APONT noted that the bill contains no requirement for input or consultation with local people prior to an area being the subject of a Minister's determination.[15]

2.16 The National Congress for Australia's First Peoples acknowledged that the Explanatory Memorandum (EM) contains assurances that the Minister will consult

---

11 *Proof Committee Hansard*, 19 February 2016, p. 49.

12 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 1 of 2016*, 3 February 2016, p. 37.

13 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 1 of 2016*, 3 February 2016, p. 37.

14 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 1 of 2016*, 3 February 2016, p. 37.

15 *Submission 23*, p. 8. See also National Congress of Australia's First Peoples, *Submission 28*, p. 6.

with communities and CDP providers before implementing new regulations, but noted that there is no formal requirement for consultation.[16]

2.17 The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda, highlighted the importance of consultation with communities prior to an area becoming subject to a Ministerial determination:

> Aboriginal and Torres Strait Islander people who will be affected by the proposed changes to the operation of the social security system ought to be afforded meaningful and effective consultation, utilising the standard of free, prior and informed consent, before relevant decisions are made. Such a consultation process should occur before the Minister determines a community to be part of a remote income support region. The Minister should only make a determination that a community is part of a remote income support region where the community has consented to the determination.[17]

2.18 In its submission PM&C stated:

> [U]nder the legal requirements that govern the making of legislative instruments, there is a requirement to consult with those people likely to be affected by a legislative instrument. [PM&C] is committed to consulting with CDP providers and communities to gauge interest and support and to explain the potential changes under the new scheme.[18]

2.19 A number of witnesses at the public hearing spoke of the opportunities presented by the bill, but cautioned that this would depend on communities and CDP providers being fully involved in the consultations to develop the legislative instruments. For example, Mr Jeremy Kee, Chief Executive Officer of Miwatj Employment and Participation (MEP), stated:

> More than anything MEP believe that a compliance framework which fosters individual responsibility and individual accountability is the first step towards achieving significant improvement for Indigenous people in our region. The current compliance system that we experience is, without a doubt, an extremely slow, opaque, complicated and non-proportional compliance system. It operates, in our region at least, as a tool of disempowerment. When I say that I mean that a person's actions no longer have a comprehensible effect for themselves on their own life. They either do not feel the effects of their actions for a long time, or they do not see the inner workings of how they work.
>
> …
>
> We are aware that the proposed legislation before parliament does not mention the devil in the detail but seeks to enable a legislative instrument to be created—and we obviously cannot see it at the moment. But despite the uncertainty around the nature of this future compliance framework, MEP is

16 *Submission 28*, p. 6.

17 *Submission 21*, p. 3.

18 *Submission 9*, p. 10.

> very, very keen to embrace a new opportunity, and we hope more than anything to leave the current compliance framework—what we would see, currently, as the failed compliance framework—to history. We look forward to a compliance framework that vests welfare recipients with agencies that will enable them to trust that their own actions will have consequences on their own life, and that these consequences in their own life can be improved by their own actions.[19]

2.20 Mr Kee argued that the 'greatest risk' with the proposed legislation 'would be a legislative instrument developed without design input from the communities and service providers who are affected'.[20] Mr Kee suggested that a further reference should be included in the bill that the legislative instrument be drafted in collaboration with communities and service providers.[21]

2.21 Mr Liam Flanagan, Community Services Manager, Arnhem Land Progress Aboriginal Corporation, described the bill as a 'great opportunity to lay a strong foundation'. Mr Flanagan continued:

> These changes will make some positive changes straightaway and push some power back to community. But it is the opportunity that is going to come to develop those other legislative tools afterwards around the compliance framework that are going to let us develop appropriate, contextualised, place-based models to a degree. You will still have to have some standardisation and some controls obviously. But there is going to be an opportunity—you would hope—to have a really high degree of consultation and to have a strong partnership between providers and Prime Minister and Cabinet to develop those things. As has been stressed by everyone you have spoken to, the compliance framework is going to be one of the pivotal make-or-break things for it, and that is where it is going to be absolutely essential to have that high level of consultation and partnership.[22]

2.22 At the public hearing, Ms Williams, PM&C, reiterated that it is the intention of the Minister and the department to work with communities and providers on legislative instruments:

> [T]he minister has made a very firm commitment to work with providers, stakeholders and others on the detail in the legislative instruments. That is really important because, as you are aware, that is where all the content sits at the moment. The other point is that when we met with providers last week, we agreed that we would sit down with any provider that was keen to be involved in assisting us in developing those instruments, so that it would be a genuine co-design process. I think that is really important. It is really the content of those legislative instruments where all the detail sits.

---

19 *Proof Committee Hansard*, 19 February 2016, p. 31.

20 *Proof Committee Hansard*, 19 February 2016, p. 31.

21 *Proof Committee Hansard*, 19 February 2016, p. 31.

22 *Proof Committee Hansard*, 19 February 2016, pp 41-42.

> The minister, it is true, has talked to a number of communities significantly about the framework of the reforms that he has proposed to the parliament, but really the bulk of the consultation will need to occur around the content of those instruments. It is our very firm intention to develop those instruments in consultation with providers and communities. That is really critical, because how the compliance framework works and how it interacts with the obligations that people have on the ground are the things that are most important to providers and communities. It is a good opportunity to also talk to them about [how] this could be simpler administratively, easier to manage and easier for them, as the primary service providers in remote Australia, to administer and run on the ground.[23]

Matters for further consultation

2.23 A number of issues raised during the course of the inquiry will need to be considered in further detail through the consultation phase, including:

- the administration of the system by CDP providers and the level of support and resources for training, IT, legal assistance and staff security;[24]
- education regarding the operation of the CDP payments system, including the new income thresholds, to avoid confusion regarding payments administered by providers and payments administered by the Department of Human Services;[25]
- clarity in regards to the operation of the appeals mechanism with respect to CDP provider staff;[26] and
- CDP participant's coverage by workers compensation and occupational health and safety schemes.[27]

2.24 PM&C has provided the committee with the 'core components' which will be used for consultation and developing further detail on the legislative instruments.[28]

---

23 *Proof Committee Hansard*, 19 February 2016, p. 49.

24 See, for example, Mr Jeremy Kee, Chief Executive Officer, Miwatj Employment and Participation, *Proof Committee Hansard*, 19 February 2016, pp 33-34; Roper Gulf Regional Council, *Submission 13*, p. 2; Ironbark Aboriginal Corporation, *Submission 27*, p. 2.

25 See, for example, Jobs Australia, *Submission 11*, pp 8-9; Welfare Rights Centre NSW, *Submission 26*, p. 3.

26 Mr Liam Flanagan, Community Services Manager, Arnhem Land Progress Aboriginal Corporation, *Proof Committee Hansard*, 19 February 2016, p. 42; Jobs Australia, *Submission 11*, p. 8; Welfare Rights Centre NSW, *Submission 26*, p. 3.

27 See ACTU, *Submission 7*, p. 10; Ms Kara Keys, Indigenous Officer, ACTU, *Proof Committee Hansard*, 19 February 2016, p. 22.

28 See Ms Nadine Williams, First Assistant Secretary, Community and Economic Development, Department of the Prime Minister and Cabinet, *Proof Committee Hansard*, 19 February 2016, p. 51. See also answers to questions on notice from PM&C, received 26 February 2016.

Remote income support scheme may be discriminatory

2.25 Some submissions argue that the foreshadowed activity and compliance arrangements for remote income support recipients would discriminate against Aboriginal and Torres Strait Islanders. For example, Jobs Australia observed:

> Fundamentally, the Bill establishes a separate system for some welfare payments that are paid in remote Australia with arrangements that most likely discriminate against Indigenous people.[29]

2.26 The Statement of Compatibility with Human Rights in the EM states:

> The measures are aimed at remote job seekers, on the basis that there are particular obstacles faced by job seekers in remote Australia, including less robust job markets, higher levels of dependence on welfare, lower levels of literacy and numeracy, and persistent and entrenched disadvantage. The measures will apply equally to all job seekers who reside within remote income support regions across Australia.
>
> These measures will be beneficial to remote income support recipients and have a positive impact by providing a simplified compliance framework and penalties that are easier to understand, as well as allowing job seekers who comply with their obligations to engage in higher levels of paid work before taper rates that reduce their amount of income support are applied.
>
> …[A] determination will not be applied on the basis of racial, cultural, gender, religious, or political status of people residing in remote income support regions.[30]

2.27 Jobs Australia refuted the claims in the Statement of Compatibility with Human Rights that the bill is not discriminatory:

> Firstly, while the text of the Bill does not explicitly target Indigenous people, there is a clear connection between a particular race and the areas in which the measures in the Bill will apply. The overwhelming majority of unemployed people in remote areas are Indigenous: of the 37,000 unemployed people in the regions that are currently considered remote, 31,000 (or 84%) are Indigenous. Besides, if the legislation was not targeted to Indigenous people, then the Minister for Indigenous Affairs would not be the responsible Minister.
>
> On the second point, the measures in the Bill are not an example of positive discrimination as the [Statement of Compatibility with Human Rights] attempts to suggest. The 'benefit' of the new legislation is supposedly a simplified compliance framework, but the new compliance framework is not part of the Bill. The Bill simply includes a delegation to the Minister for Indigenous Affairs to establish whatever compliance arrangements that Minister sees fit…The Minister (and if not the current Minister, then a future Minister) might choose to use the powers conferred by the Bill to

29 *Submission 11*, p. 11.

30 Statement of Compatibility with Human Rights, pp 5-6.

> implement a harsher compliance regime for remote communities than exists in non-remote areas.[31]

2.28 It was also noted that the proposals pursuant to the bill come in addition to the current CDP requirements, which have a greater activity obligation for remote job seekers. On this point, the Central Land Council stated:

> The CDP system imposes more onerous Work for the Dole compliance arrangements on remote participants than non-remote. Remote participants are required to work 25 hours per week spread over 5 days per week, while those in non-remote areas (other than Alice Springs town camps) are only required to attend 15 hours Work for the Dole in order to receive entitlements.[32]

2.29 The committee notes that the Parliamentary Joint Committee on Human Rights is seeking further advice from the Minister in relation to this matter and the committee makes no further comment on this issue.[33]

Committee view

2.30 The committee notes the evidence it has received regarding concerns within remote communities about the continuous changes within this policy area.[34] However, the committee has also received evidence from CDP providers who welcome the opportunities presented by the bill and believe that the proposed changes will go some way to addressing the disengagement of people in remote communities.[35]

2.31 The committee understands some stakeholders are concerned about the measures in the bill and particularly the scope of determinations which the Minister will be able to make pursuant to the bill. The committee shares these reservations about the bill.

2.32 With regards to the scope of the Minster's discretion, the committee appreciates that this is to provide flexibility, so the Minister can consult with communities to determine participation requirements and compliance arrangements and make amendments to meet the changing needs of communities.[36]

---

31 *Submission 11*, pp 11-12.

32 *Submission 25*, p. 10.

33 Parliamentary Joint Committee on Human Rights, *Thirty-third report of the 44th Parliament*, 2 February 2016, p. 12.

34 See, for example, Mr Gerard Thomas, Policy and Media Officer, Welfare Rights Centre NSW, *Proof Committee Hansard*, 19 February 2016, pp 9-10; Mr David Thompson, Chief Executive Officer, Jobs Australia, *Proof Committee Hansard*, 19 February 2016, p. 17.

35 See, for example, Mr Ben Burton, Deputy Chief Executive Officer and Manager of CDP program, Winun Ngari Aboriginal Corporation, *Proof Committee Hansard*, 19 February 2016, p. 2.

36 EM, p. 3.

2.33 The committee also recognises the issues caused by the disengagement of people in remote communities and shares the view that there will be opportunities to address this through the reforms proposed in the bill.

2.34 Clearly, the success of the measures in the bill, and the reforms to be introduced through legislative instruments pursuant to the bill, depend on the Minister and PM&C undertaking genuine consultation with communities and CDP providers.

2.35 The committee does not doubt that the meetings and conferences that have taken place so far with CDP providers and stakeholders have been undertaken with the best intentions. However, the committee has questions as to whether they have necessarily constituted proper consultation on the proposed reforms in the bill. Going forward, it is necessary for the Minister, and more particularly officers of PM&C, to work with communities and providers on measures to be included in the relevant legislative instruments. The committee strongly encourages PM&C to review the evidence provided to the committee and ensure that the concerns raised through the course of this inquiry are considered during the consultations to develop legislative instruments.

2.36 While the committee supports the bill, it is also cognisant that ongoing monitoring of the implementation of measures in the bill through the Senate estimates process will be important in the future.

Recommendation 1

2.37 The committee recommends that the Senate pass the bill.

Senator Cory Bernardi

Chair

Labor Senators' Dissenting Report

1.1 Unemployment is unacceptably high in many remote parts of the country and for certain groups, including in particular Aboriginal and Torres Strait Islander peoples.

1.2 Labor understands that remote jobseekers face unique challenges when looking for work.

1.3 Labor believes that more can and should be done to support these jobseekers into employment.

1.4 Labor believes the current arrangements can be improved to ensure a more effective and timely compliance framework that meets the needs of providers, communities and jobseekers.

1.5 Most importantly, Labor believes the system can be improved to give remote jobseekers the best chance of finding and keeping work.

1.6 However, the Labor members of the Committee have significant concerns about whether this Bill will achieve these aims.

1.7 Despite requests, the Government has been unable to address these concerns.

1.8 As a consequence, the Labor Senators do not agree with the recommendation of the majority.

Lack of consultation with communities and providers

2.1 Labor Senators are concerned that CDP providers, communities and jobseekers have been given little to no opportunity to provide meaningful input into the design and implementation of the scheme proposed in the Bill.

2.2 The majority report of the Committee notes the concerns of many stakeholders about the short timeframe for communities, CDP providers and other interested parties to provide feedback on the proposed reforms.

2.3 The Tiwi Islands Training and Employment Board is owned and managed by the Tiwi Traditional Owners and provides the Community Development Program on the Tiwi Islands. In its submission it stated:

> The tabling of the Bill in December was the first time we were made aware of the significant changes that are contained in the Bill. To our knowledge, there has been no consultation with communities in our region about these proposals… The introduction of the Bill immediately before the holiday break and the very short time available to prepare submissions and have them duly authorized does not in any way constitute any proper or bona fide consultation. [1]

2.4 Evidence from Mr. Ben Burton, from Winun Ngari Aboriginal Corporation, confirmed that despite many conversations with the Minister for Indigenous Affairs

---

1 *Submission 4*, p.1.

and the Department of the Prime Minister and Cabinet (PM&C), they had not seen details of the Bill.

> What we have seen predominantly is what is being promoted through the department, which is the five or six dot points regarding the biggest changes.[2]

2.5 While the majority report recognises these concerns, it accepts without question the evidence of PM&C that the Department is confident that adequate consultation has taken place, despite overwhelming evidence to the contrary.

2.6 PM&C's own submission says that "initial consultations" on the Bill took place at a meeting in Cairns on 16-17 February 2016 – the same week as the Committee's only public hearing, and some months after the Bill had already been introduced into Parliament.

2.7 Labor Senators acknowledge and accept the evidence from PM&C that meetings have taken place with CDP Providers on four occasions beginning in March 2015.

2.8 Labor Senators note some of these meeting were held prior to the implementation of the first stage of the new CDP scheme.

2.9 The supplementary submission from Jobs Australia confirmed that the meeting in Cairns held on the 16-17 February 2016 was the first to include 'consultation' on the agenda and was the only meeting of the four referenced in the PM&C submission at which the Bill was discussed.[3]

2.10 Labor Senators concur with the assessment of Tangentyere Council that:

> If the Government wishes to make changes of the magnitude proposed in the Bill, it is of the utmost importance that the people and communities affected are properly engaged in the change process, something which has not occurred.[4]

Breadth of Ministerial discretion

3.1 Labor Senators hold grave concerns about the breadth of Ministerial discretion provided for in the Bill.

3.2 As outlined in the majority report, the Bill seeks to divest a broad range of powers, which currently sit with the Parliament, to the Minister for Indigenous Affairs.

3.3 The inquiry has revealed that core aspects of the new CDP arrangements are simply not in the Bill. Rather, key details are left to the discretion of the Minister.

---

2 *Proof Committee Hansard*, 19 February 2016, p.4

3 *Submission 11 (supplementary)*, p.10.

4 *Submission 10*, p.2.

3.4 Notably, the Bill does not limit the range of matters the Minister may determine.[5]

3.5 Almost every submission to the Committee detailed serious concerns with such broad ministerial discretion.

3.6 Dr Kirrily Jordon, Research Fellow with the Centre for Aboriginal Economic Policy Research at Australian National University, noted:

> This Bill would give the Minister very wide scope to determine the social security rules for all social security recipients in the declared regions, and to vary those rules at any time. The list of matters that could be dealt with in a determination is very broad… Moreover, this list is non-exhaustive, meaning that while existing protections are swept aside it is not at all clear how the new arrangements would work in practice nor whether there would be sufficient protections against inappropriate obligations and penalties.[6]

3.7 The Northern Land Council argued that the Bill would provide the Minister with "unfettered power".[7]

Lack of justification for broad ministerial powers

3.8 Labor understands that the Government's rationale for these provisions is the need to address poor employment outcomes and disproportionately high rates of compliance breaches in remote regions.[8]

3.9 The Explanatory Memorandum and the Minister's Second Reading speech argued that the current framework is failing in remote regions and a flexible approach is needed to enable simpler payment and compliance arrangements to be introduced. [9]

3.10 However, the Bill does not seek to address specific compliance issues. Rather, it gives the Minister discretionary power over the design and implementation of an entirely new social security arrangement for remote jobseekers.

3.11 Proposals to significantly alter the current distribution of responsibilities with regards to social security arrangements are not supported by evidence gathered by the Committee.

3.12 Ms Lisa Fowkes, a Research Scholar attached to the 'Implementing the RJCP' project at Australian National University, noted in her submission that two of the substantive measures the Minister indicated would be introduced via legislative instrument are already addressed elsewhere:

> The issue of immediacy of penalties will likely be addressed through a Bill currently before the Parliament (Social Security Legislation Amendment

---

5 Social Security Legislation Amendment (Community Development Program) Bill 2015, section 1061ZAAZA(2).

6 *Submission 5*, p.5.

7 *Submission 18*, p.4.

8 Explanatory Memorandum, p. 3.

9 Explanatory Memorandum, p. 3.

> (Further Strengthening Job Seeker Compliance) Bill 2015). Weekly payments are already possible under the existing social security legislation.[10]

3.13 Labor Senators note that the Senate Standing Committee for the Scrutiny of Bills has sought further information from the Minister regarding an evaluation of the appropriateness of using delegated legislation to give effect to the central elements of the scheme.

3.14 The Labor members of this Committee note with concern that the majority report gives no consideration to whether such a broad ministerial discretion is appropriate or justified to achieve the stated aims of the Bill.

3.15 The Explanatory Memorandum states the primary reason for providing core elements of the scheme in legislative instruments rather than the primary legislation is to:

> …allow the Minister to consult with communities and the Parliament to determine participation requirements and compliance arrangements and to make amendments to meet the changing needs of communities.[11]

3.16 Despite this, as the National Congress of Australia's First Peoples noted in its submission:

> Besides assurances in the [Explanatory Memorandum] that the Minister will consult with communities and CDP providers before implementing the new CDP regulations, based on the arrangements in the proposed legislation, there is no formal requirement for consultation.[12]

3.17 Labor understands the need for flexible arrangements tailored to the particular circumstances and needs of remote communities.

3.18 However, the matters to be determined by the Minister through legislative instrument are of great practical importance to the people and providers affected by them.

3.19 Labor Senators are not convinced of the need to vest the power to determine such a broad range of matters in the Minister for Indigenous Affairs in order to achieve the intent of the Bill.

Parliamentary scrutiny

4.1 Labor Senators are concerned by the evidence presented to the Committee regarding the lack of parliamentary scrutiny of the Bill.

4.2 In its submission, PM&C acknowledged that the only parliamentary scrutiny over the core elements of the CDP scheme is disallowance of the legislative instrument.

---

10 *Submission 1*, p.9.

11 Explanatory Memorandum, p. 3.

12 *Submission 28*, p.6.

4.3 Echoing concerns expressed in many of the other submissions, Jobs Australia argued:

> Providing welfare payments to people in need of support is a core responsibility of the Federal Government, and to delegate this much authority over social security law to one Minister would be a fundamental abrogation of the Parliament's responsibility to hold the Government to account – a responsibility that is particularly important when individuals' human rights are affected.[13]

4.4 The National Congress of Australia's First Peoples strongly refuted the Government's claims that disallowance afforded adequate parliamentary scrutiny of the measures provided in legislative instruments.

> Including the core measures within the Bill affords Parliament the opportunity to analyse and scrutinise the contents of proposed legislation before it votes whether or not to pass that bill into law. It is a fundamental tenant of the Westminster system of government that the Executive be held to account by the Parliament. The core function of Parliament is severely limited when the only recourse to check the power of a Minister is to disallow a regulation.[14]

4.5 It is both disappointing and perturbing that while the majority report acknowledges these serious concerns, the Committee has accepted without question the evidence from PM&C that disallowance constitutes adequate parliamentary scrutiny.

4.6 The Committee accepted this evidence on the word of the Government, as the Committee was not presented with the detail or a draft of the proposed regulations.

4.7 The willingness of the Committee to accept this evidence on its face, even without the detail of the relevant regulations or the process by which they will be determined or varied, is astounding.

4.8 Labor Senators concur with the view of the Central Land Council, that "leaving critical aspects of the new measures to be dealt with by regulation is inappropriate."[15]

Importance of access to social security safety net and safeguards

5.1 Labor believes that access to the social security safety net is an important right of all Australians, consistent with Australia's international obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

5.2 As the Australian Council of Social Services noted in its submission, the Bill seeks to remove remote income support recipients from the existing social security arrangements, thereby removing them from the safeguards and protections built into the existing social security law.

---

13 *Submission 11*, p.9.

14 *Submission 28*, p.13.

15 *Submission 25*, p.9.

> In effect, many protections built into the Social Security Act would no longer apply to people in remote areas. This may include, for example, the ability to take underlying issues into account in determining whether to impose a sanction for non-compliance, for example, domestic violence, as provided for by the Comprehensive Compliance Assessment' process.[16]

5.3 We would be very concerned by any rules that do not ensure that job seekers in remote regions have equal access to the same rights and protections offered to other Australians under social security law.

5.4 The Bill in its current form does not provide that accepted standards of protection for jobseekers in existing social security laws will be maintained.

5.5 Labor Senators are concerned by the lack of detail available about the process of review available to remote income support payment recipients.

5.6 The Explanatory Memorandum suggests that the Minister intends to make CDP providers the decision makers in the first instance, replacing Department of Human Services (DHS) officials under existing arrangements.[17]

5.7 It further indicates that internal review will be conducted by PM&C, and not DHS.

5.8 Labor Senators disagree that PM&C is the appropriate agency to conduct review of social security decisions, particularly in light of the lack of a clear process and detail about how expertise, accountability and consistency will be maintained.

Transfer of responsibilities to CDP providers

6.1 The Explanatory Memorandum suggests that CDP providers, rather than DHS, will be responsible for compliance decisions as well as making income support payments to job seekers in remote regions.[18]

6.2 This is not detailed in the Bill; but rather, is expressed in the Explanatory Memorandum and the Minister's Second Reading Speech as a central element of regulations to be introduced at the discretion of the Minister as provided in the Bill.

6.3 Labor Senators understand the Government's rationale for this transfer of responsibility is that it will strengthen jobseeker compliance.

6.4 In its submission, PM&C explains that the more immediate relationship between payments and attendance will reduce compliance breaches and penalties incurred by jobseekers.

6.5 PM&C guarantees that "the reforms will not increase complexity for providers and jobseekers."[19]

---

16 *Submission 22*, p.2.

17 Explanatory Memorandum, p.7.

18 Explanatory Memorandum, p.7.

19 *Submission 9*, p.2.

6.6 However, much of the evidence presented to the Committee does not support this claim.

6.7 Australian National University Research Fellow, Lisa Fowkes, argued that CDP providers taking over payments will not reduce red tape; but rather, would create new issues.

> One of the principal reasons for this is that, while providers are capable of employing people and administering wages to employees, the administration of the social security safety net requires more rules, more reporting and more specialized attention to complex needs. Most providers would prefer to be much less involved in social security administration and much more involved in finding and creating employment than they currently are.[20]

6.8 This was supported by evidence from Mr. Michael Berto, CEO of Roper Gulf Regional Council:

> The current CDP programme has already increased our compliance and administrative staff by 50%. This has been caused by the complicated processes introduced, the inadequacy of the IT systems that were not completed until the end of December 2015 at PM&C, and the lack of reporting feedback…If the current programme is not ready how can you introduce new changes and expect great results.[21]

6.9 The appropriateness of CDP providers making compliance decisions and social security payments was questioned in many of the submissions to the Committee.

6.10 Ironbark Aboriginal Corporation pointed out that:

> Additionally, the structure of payments – ie, paid only on attendance and/ or compliance action for invalid non-attendance, means the changes will in effect put providers in charge of determining their own payment levels, based on how they treat non-attendance or lack of engagement from participants.[22]

6.11 Lisa Fowkes argued that this creates a direct conflict between CDP providers' financial interests in applying penalties and their obligations to avoid harm to vulnerable job seekers through reducing their income.[23]

6.12 The Australian Council of Trade Unions noted that:

> Under the current system the role of a CDP provider is to assist job seekers in employment activities and report non-compliance. It is the function of DHS, who has no financial or other incentive to administer penalties, through a system of checks and balances.[24]

---

20 *Submission 1*, p.12.

21 *Submission 13*, p.2.

22 *Submission 27*, p.2.

23 *Submission 1*, p.11.

24 *Submission 7*, p.11.

6.13 The Tiwi Islands Training and Employment Board and Tangentyere Council expressed concerns about the effect of the transfer of responsibility and conflict of interest on the safety of their locally employed staff members.

6.14 The effect of the Bill is to provide the Minister with broad discretion over the functions and responsibilities of CDP providers, so that the Minister may give effect to measures that would require providers to adopt responsibility for compliance decisions and social security payments.

6.15 This issue was not considered in the majority report despite being clearly identified by Government as being one of the central features of future regulations.

6.16 Labor supports devolution to local decision making where appropriate.

6.17 Labor Senators acknowledge and accept the evidence from a number of providers that the current arrangements with DHS are not working as well as they should.

6.18 However, Labor Senators have serious concerns about ministerial discretion to effect such a change, particularly where this may divert providers from their core functions of providing quality activities and helping jobseekers into employment.

6.19 There has been no evidence provided from the Government to assess whether some of these aims could be achieved through existing social security legislation.

Taper rates

7.1 Labor welcomes increases to the taper thresholds for remote job seekers.

7.2 However, the precise arrangements for a new taper rate are not found in the Bill itself. Rather, the Explanatory Memorandum makes it clear that the Government intends to raise the threshold at which rates start to taper to $650 per week.

7.3 Labor Senators again express concern that details of a central element of the new CDP scheme are absent from the primary legislation.

7.4 The Explanatory Memorandum gives cause for concern at the effect of the stringent arrangements that could underpin the threshold increase.

7.5 The Explanatory Memorandum and the Minister's Second Reading Speech suggest that social security payments will be deducted for every hour of their 'Work for the Dole' (WFTD) activity not completed, even where the reason for non-attendance is paid work.[25]

7.6 Professor Jon Altman from the Alfred Deakin Institute for Citizenship at Deakin University explained that the former Community Development and Employment Program (CDEP) referenced by the Minister was premised on the payment of award rates for hours worked.

> For the [CDEP] participant the base payment was a safety net from which additional work could be undertaken on a flexible basis as determined by

25 Explanatory Memorandum, p.9.

> seasonal factors, ceremonial commitment, family responsibilities or personal health status.[26]

7.7 Professor Altman went on to say that:

> The new proposal will suit those who want to work 25 hours per week for the dole (at about $10 per hour) and then work additional hours at award rates. But it will not suit those who only want to work part time or those who want to work at award rates – for them there will be a trade-off that constitutes a new form of poverty trap.[27]

7.8 According to the Tiwi Islands Training and Employment Board:

> In most cases however, a person will do paid work instead of WFTD, not in addition to it. Jobseekers would be worse off than under existing arrangements that allow hours of paid work to be counted towards their 25 hours WFTD requirements. The benefits of increased threshold for taper are undermined by the activity arrangements that underpin them.[28]

7.9 ANU Research Fellow Lisa Fowkes explained the difference between current arrangements and those outlined in the Explanatory Memorandum:

> In order to retain their full benefits and avoid a penalty, they would have to work their full WFTD hours and do any additional employment hours on top of this. By contrast, under the existing guidelines, if the person has moved on to a part time rate of income support, the overall WFTD hours requirement would reduce.[29]

7.10 The evidence presented to the Committee suggests that the proposed taper rates would improve the earning capacity for some people, but reduce income for many others in remote communities.

Human rights compatibility and indirect discrimination

8.1 Labor Senators acknowledge the concerns expressed in many of the submissions that the Bill is not compatible with Australia's human rights obligations under international law.

8.2 In assessing the Bill's compatibility under the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Parliamentary Joint Committee on Human Rights (PJCHR) found in its initial assessment of the Bill that the new obligations and penalty arrangements would limit CDP participants' rights to social security under Article 9 of the ICESCR.

8.3 The PJCHR further found the Bill disproportionately affects Aboriginal and Torres Strait Islander peoples.

---

26 *Submission 8*, p.15.

27 *Submission 8*, p.15

28 *Submission 4*, p.5.

29 *Submission 1*, p.14.

8.4 Labor Senators share the PJCHR's concerns that the regulations are not yet published.

8.5 Labor notes that the PJCHR has sought advice from the Minister and is yet to make a final assessment of:

- whether the limitations the Bill places on the right to social security are reasonable and proportionate to the achievement of the Bill's objective; and
- whether the disproportionate impacts on Aboriginal and Torres Strait Islander peoples are justified under international human rights law.

Conclusion

9.1 Labor Senators are concerned that the recommendation put forward in the majority report stands in direct contrast to the evidence gathered by the Committee.

9.2 If enacted, the Bill would provide the Minister for Indigenous Affairs with a wide-ranging discretion to design and implement new social security arrangements for approximately 37,000 remote jobseekers, of which 84 per cent are Aboriginal and Torres Strait Islander people.

9.3 Labor believes that it is essential that the processes for developing and implementing change are appropriate for purpose, subject to robust scrutiny and developed in genuine consultation with those affected by the change.

9.4 In the opinion of Labor members of the Committee, it is very rare indeed to see a majority report that recommends the passing of a Bill that contains so much criticism of the Bill itself.

9.5 Labor remains willing to work in good faith with the Government to improve employment outcomes for remote jobseekers.

Recommendation 1

That the Bill be opposed in its current form.

Senator Jenny McAllister
Deputy Chair

Senator Nova Peris

Senator Claire Moore

Australian Greens Dissenting Report

Introduction

The Australian Greens do not support the recommendation of the majority report that the Social Security Legislation Amendment (Community Development Program) Bill 2015 be passed.

1.1 As highlighted below, there are major flaws in the bill. During the hearing process the Department of Prime Minister and Cabinet were unable to provide satisfactory answers to many of the issues raised. It was the understanding of committee members that because of this the inquiry reporting date was to be extended. The reporting date was subsequently shortened, and then extended again by a few days. This process made it difficult to adequately explore the full implications of the measures in the bill. Areas of significant concern include:

- Significant gaps in the consultation process
- That despite the name of the policy, it differs significantly from the former Community Development Economic Program (CDEP), and is not a wages based policy as the CDEP was
- The discriminatory impact of the measure, which will disproportionately impact Aboriginal people in remote communities.
- The fundamental shift in the provision of social security in Australia
- Shifting decision making to private and non-government organisations
- Shifting responsibility for some areas of social security to the Minister for Indigenous Affairs:
    - This provides significant discretion to the Minister to make policy through legislative instrument, reducing the level of Parliamentary scrutiny
    - It may remove people in remote communities from the protection provided under social security legislation
- Significant implementation challenges, including the shift of responsibilities from the Department of Human Services to providers

Reporting date

1.2 Following an initial reporting date of the 29th of February, the Committee agreed to an extended reporting date to later in March, before subsequently reverting to the original date of the 29th, and then extending to the current reporting date of 2 March 2016. This process made it difficult to consider the large number of significant concerns raised in evidence to the Committee. This dissenting report is just a short summary of the many fundamental problems with a poorly devised policy measure. The Australian Greens thank the wide range of organisations and witnesses who have helped the Committee by providing insightful analysis and evidence.

Consultation

1.3 The main committee reports notes that:

> One of the themes in submissions and in evidence at the public hearing was frustration at the lack of consultation with communities and CDP providers prior to the introduction of the bill.[1]

1.4 The Australian Greens share this fundamental concern about the lack of consultation on such a significant proposed change.

1.5 Jobs Australia, in fact, said in its submission that:

> … to date, there has been no formal consultation on any aspect of the CDP arrangements. To the extent that consultation has occurred, it has been limited to discussions with some individual communities and individual CDP providers. Of the 31 provider staff who dialled in to Jobs Australia's teleconference consultation on the Bill, none had been consulted on any aspect of this Bill before it was introduced in December, nor were they aware of any such consultation having taken place.[2]

1.6 Mr David Thompson, Chief Executive Officer of Jobs Australia, re-iterated that concern in evidence to the Committee:

> I would assert that everything hangs on the details. The way things work and whether they are going to be a success or not hangs on the details.
>
> I put forward the view that tabling the bill before Christmas with comments due over Christmas at the end of January with the initial consultation with providers about this bill and its implications happening two days ago does not amount to appropriate, effective or proper consultation … the Prime Minister said in the parliament last week:
>
> 'It's our role as government to provide an environment that enables Indigenous leaders to develop local solutions'.
>
> Not providers, leaders. It is time for governments to do things with Aboriginal people, not do things to them. The way this process is run does not fit that formula.[3]

1.7 Mr Morrison, Chief Executive Officer of the Northern Land Council, noted that:

> …each of these policies, along with the design of the CDP bill, which we are here today discussing, has been developed without proper open consultation with the Aboriginal people.[4]

1.8 At the hearing for this bill departmental officials said:

---

1 Senate Finance and Public Administration Legislation Committee, Security Legislation Amendment (Community Development Program) Bill 2015, February 2016, p. [7].

2 Jobs Australia, *Submission 11,* p. 5.

3 *Proof Committee Hansard,* p. 13.

4 *Proof Committee Hansard,* p. 24.

> Consultation with the providers has been by any judgement quite comprehensive, going back more than a year. There have been meetings and discussions at quite some level of detail with individual providers but there has also been collectively an opportunity for providers to gather on at least four occasions as a group to work with us, to workshop some of the issues we are discussing and work a way forward … The first of the conferences with all the providers took place in March last year, and there have been four all up.[5]

1.9 The department's evidence makes it clear that this process related to policy measures, rather than to the detail of the bill itself, which was only introduced in early December 2015. Draft regulations are not yet available.

1.10 The department did provide a draft of a consultation paper which was proposed to be circulated to 'communities and providers', in relation to the drafting of the legislative instruments proposed in the Bill. A significant concern raised in multiple submissions and in relation to multiple aspects of the proposed changes was that much of the detail is not in the primary Bill. Instead, significant details of how this legislation will be implemented and will work in practice have been delegated to legislative instrument. Given this, it is deeply concerning that the consultation on the drafting of the legislative instruments has not yet begun.

1.11 The Australian Council of Trade Unions said in evidence to the Committee:

> In terms of consultation, as expressed by David Thompson, we are dismayed that the consultation has not been done at the front end. It is back-end consultation now that the legislation is already written and the program has already been imposed with providers and community members.[6]

Differences from CDEP

1.12 In his second reading speech, the Minister said that 'Community leaders and jobs providers often remind me of the positive elements of the previous Community Development Employment Project (CDEP) in remote Australia.'[7]

1.13 Evidence provided to the Committee from multiple sources makes it very clear that this program is not a revisiting of those earlier positive elements.

1.14 ACOSS said:

> The CDP program is significantly different to the Community Development Employment Program (CDEP) for Aboriginal and Torres Strait Islander people that previously operated in remote areas. The former CDEP paid wages (and therefore complied with minimum wage requirements), was voluntary, provided people with an income support safety net payment if they did not meet community administered 'no show no pay' requirements

---

5 Mr Richard Eccles, Deputy Secretary, Indigenous Affairs, PM&C, *Proof Committee Hansard*, p. 48.

6 Ms Karalyn Keys, Indigenous Officer, ACTU, *Proof Committee Hansard*, p. 48.

7 Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, Second Reading Speech, *Senate Hansard*, 2 December 2015, p. 9662.

> to receive a wage payment, and was designed in consultation with local communities, building in flexibility to local needs.[8]

1.15 Similarly, Jobs Australia highlighted key differences between the CDEP and the current CDP changes proposed in this bill:

> Under CDEP, participants were paid wages – not welfare, with the consequence that wages had to comply with minimum wage requirements. Under CDP, most participants perform Work for the Dole for 25 hours to receive a welfare payment, which equates to an hourly rate that is significantly less than the minimum wage.
>
> CDEP was an 'opt-in' arrangement that operated as an alternative to welfare. People who opted in had the opportunity to work for real wages, and if they worked additional hours then they received additional pay. If, however, a person could not work or opted out of CDEP for some other reason, they could still access a safety-net payment through the welfare system. This meant that 'no-show, no-pay' rules (over which, local providers had significant discretion, and in many cases did not enforce strictly) never left vulnerable people completely without access to the safety-net. In contrast, no-show no-pay in CDP results in removal of the safety-net payment and can leave people without income support. This could put individuals (and any dependent family members) at risk.
>
> CDEP was explicitly designed to empower communities. Communities, through local community councils, had to choose to implement a CDEP scheme and had the flexibility to tailor the rules that would apply in their community, as well as they types of projects that it would support. Under CDP (and with the measures in this Bill), the program is imposed by Government, the rules are determined by the Minister, and local projects are determined by the Minister, the Department and/or a contracted CDP provider. At best, communities may be consulted. These arrangements do not empower communities.[9]

1.16 Professor Jon Altman, an expert on CDEP, noted key differences in his evidence to the Committee:

> …what really surprises me about these proposals—I quite transparently say I was in some discussions with Senator Scullion about the new proposals—is that this notion that people will get wages is missing, that they will be defined as employed and that they will have the opportunity to earn top-up. These are the fundamental things, alongside community control, that made CDEP so successful. When you actually look at what is being proposed, the ability to earn top-up is after 25 hours of working for the dole, not the 15 hours for award wages that you had under CDEP, so there is a 10-hour gap there. New poverty traps will be created, because some people will not do

8 *Submission 22*, p. 4.

9 *Submission 11*, p. 5.

> those 25 hours and then will earn extra money for the extra hours they will do, but there will be a trade-off. So it will not improve things.[10]

1.17 An appeal to the success of the CDEP program is fundamentally flawed, given the major differences which mean that the CDP, despite the similar name, is a very different approach.

Discrimination

1.18 One of the many significant concerns in relation to this proposed bill is the issue of discrimination. The Explanatory Memorandum says that:

> …a determination will not be applied on the basis of racial, cultural, gender, religious, or political status of people residing in remote income support regions.[11]

1.19 However a much higher proportion of the population in remote regions are Aboriginal and Torres Strait Islander peoples. The Parliamentary Joint Committee on Human Rights said that:

> By enabling the creation of a different system of obligations and penalty arrangements for remote job seekers, the bill engages and may limit the right to social security and the right to an adequate standard of living, and the right to equality and non-discrimination.[12]

1.20 Social Justice and Native Title Commissioner Mick Gooda said:

> I am concerned the Healthy Welfare Card trial and the implementation of Work for the Dole in remote communities may give rise to indirect discrimination and have a negative impact on the ability of Aboriginal and Torres Strait Islander peoples to enjoy their rights, particularly the right to social security.[13]

1.21 He re-iterated those concerns in a submission to the inquiry, recommending that the Bill not be passed:

> I reiterate my concerns about the mandatory application of Work for the Dole arrangements and submit that the Bill and Explanatory Memorandum, as currently drafted, do not provide sufficient protections of human rights. In view of these issues, the Commission considers that the Bill should not be passed in its present form.[14]

1.22 Jobs Australia also noted significant discrimination concerns in their submission:

---

10 *Proof Committee Hansard*, p. 45.

11 EM, p. 6.

12 Parliamentary Joint Committee on Human Rights, Thirty-third report of the 44th Parliament, February 2016, p. 7.

13 Australian Human Rights Commission, Social Justice and Notice Title Report 2015, p 61.

14 *Submission 21*, pp 3-4.

> Fundamentally, the Bill establishes a separate system for some welfare payments that are paid in remote Australia with arrangements that most likely discriminate against Indigenous people.
>
> ...while the text of the Bill does not explicitly target Indigenous people, there is a clear connection between a particular race and the areas in which the measures in the Bill will apply. The overwhelming majority of unemployed people in remote areas are Indigenous: of the 37,000 unemployed people in the regions that are currently considered remote, 31,000 (or 84%) are Indigenous …
>
> The real situation is that the new CDP contract imposes greater mutual obligation requirements on remote job seekers than currently apply to non-remote job seekers; more onerous obligations mean it is easier for remote job seekers to fail the requirements; that, in turn, increases the likelihood and frequency of financial penalties; and the measures in this Bill remove safeguards and protections that non-remote job seekers enjoy. Given that the vast majority of the target group are of one particular race, the arrangements are likely to be discriminatory.[15]

1.23 They also succinctly said one of the most obvious reasons for concern about the discriminatory impact for this proposed bill: '…if the legislation was not targeted to Indigenous people, then the Minister for Indigenous Affairs would not be the responsible Minister'.[16]

1.24 The Australian Council of Trade Unions also noted concerns about discrimination as a basis for their opposition to the proposed bill:

> This year—it is quite ironic—Australia celebrates the 50th anniversary of when Aboriginal workers had to strike before their rights were recognised during the event that is now known as the Wave Hill walk-off. This event has been marked so poignantly across history by the finalisation of that strike being the footage of Gough Whitlam pouring sacred red dirt through Vincent Lingiari's hands. In 2016, 50 years since the Wave Hill walk-off, we cannot understand how it is conceivable that an Australian government would propose laws that once again allow Aboriginal people to be treated as an inferior class of workers in this country. Based on that, we cannot support the legislation.[17]

Fundamental change to social security

1.25 The bill makes fundamental changes to social security arrangements for remote areas, and provides the Minister with significant discretion through delegated legislation. This point was made in a number of submissions and in evidence to the Committee. The Australian Council of Social Services (ACOSS) said in their submission:

---

15 *Submission 11*, p. 11.

16 *Submission 11*, p. 11.

17 Ms Karalyn Keys, Indigenous Officer, ACTU, *Proof Committee Hansard*, p. 21.

> We consider that Bill would effectively allow the Minister to remove areas of remote Australia from those parts of social security legislation that govern the obligations and many of the rights of people receiving activity tested income support payments. It would reduce transparency and independent scrutiny of the effects of income supports arrangements on vulnerable people.[18]

1.26 The National Welfare Rights Network (NWRN) similarly noted that the bill:

> …undermines basic protections in social security law such as appeal rights.
>
> The Minister is given a general power to determine the regime of obligations and compliance applicable to recipients of activity tested payments, such as Newstart Allowance, who reside in designated remote regions by legislative instrument …Simply put, the Minister has power to override or modify the Act. The Minister has not provided a justification for the width of this power.[19]

1.27 Jobs Australia made the point even more strongly in its submission:

> The Bill delegates significant new regulation-making powers to the Minister for Indigenous Affairs and the Secretary of the Department of Prime Minister and Cabinet. Key aspects of the arrangements are simply not in the Bill …
>
> Legislative instruments are, of course, disallowable, but that is a lesser level of Parliamentary scrutiny than that which applies to legislation. The process takes time and the legislative instruments take effect from the time they are registered, which means they can be in place for months before they are considered by the Parliament.
>
> Providing welfare payments to people in need of support is a core responsibility of the Federal Government, and to delegate this much authority over social security law to one Minister would be a fundamental abrogation of the Parliament's responsibility to hold the Government to account – a responsibility that is particularly important when individuals' human rights are affected.[20]

1.28 The Australian Greens agree that this change is not appropriate. It delegates decision making away from the Minister for Social Services and also abrogates the role of the Parliament in scrutinising changes to social security legislation.

Shift from the Department of Human Services to providers

1.29 A significant area of concern is the shift of responsibility and administration from the Government's Department of Human Services, to private service providers. Multiple submissions noted concerns on this front.

1.30 Professor Jon Altman said in his submission:

---

18 *Submission 22*, p. 2.

19 *Submission 17*, pp 5-6.

20 *Submission 11*, p. 9.

> It is argued by the Minister that the CDP Bill will simplify compliance arrangements for remote income support recipients, but it is difficult to see how this will happen. For a start the new category 'remote income support recipient' will be created and treated differently from other recipients of welfare. And while monitoring will be devolved to community based providers in remote income support regions, they will also be charged with the burdensome task of panoptic micro-management of participation to the hour rather than to the day. So in the name of a simplified regulatory regime, providers will actually be entrusted with a more complicated regulatory framework. Each provider will be monitoring an average 500 job seekers not just for their participation for remote income support payments (25 hours by the hour per week for Newstart equivalent payments) but also for their movements between regions and for a complex set of acceptable reasons (like ceremony leave) for non-attendance.[21]

1.31 The NWRN similarly noted in relation to this change that:

> Increasing the functioning and capacity of DHS, which is the government's specialist service delivery agency in remote areas is the answer, not handing over administrative functions to CDP providers, especially if the increased burden on those providers diverts them away from their core functions of providing valuable activities and helping job seekers into employment.[22]

Decisions made by services providers, not the Department of Human Services

1.32 The shift from DHS to providers will require service providers to make penalty and obligation decisions in relation to job seekers. Multiple submissions had concerns about this shift. ACOSS said:

> The Bill would delegate administration of social security payments and penalties to local employment service providers (CDP providers), in effect privatising decisions about how obligations and penalties for individual people are applied by removing those decisions from the responsibility of the Department of Human Services. There are substantial concerns with this, including that independent local providers embedded in a small community, who often source staff from that community, would be making decisions about application of sanctions to people they are likely to know personally or be related to, which can cause a conflict of interest in the absence of a process to address this.[23]

1.33 Jobs Australia said:

> Under the arrangements proposed in the Bill, such decisions would be made by staff in CDP providers, who are not free to apply their discretion and who have contractual incentives that push them to apply financial penalties.

---

21 *Submission 8*, p. 14.

22 *Submission 17*, p. 9.

23 *Submission 22*, p. 3.

> Individual circumstances, vulnerabilities and barriers are less likely to be appropriately taken into account.[24]

Appeals process

1.34 NWRN particularly highlighted concerns about the appeals process. NWRN said in their submission:

> …the CDP Bill's transfer of power to the Minister is so wide as to undermine basic protections for income support recipients such as appeal rights. The explanatory memorandum, and the Department's submission, maintains that the CDP Bill preserves appeal rights. However, in the NWRN's reading of the bill, this is not so clear.
>
> It is true that proposed s 125 makes decisions of departmental officers in relation to the new regime reviewable in the ordinary way, even if made under a legislative instrument. However proposed s 144(da) precludes AAT review of decisions by CDP providers. This is problematic, because the bill also gives the Minister a wide power to make determinations regarding the powers and functions of CDP providers, and review rights in relation to CDP provider decisions. On its face, this would authorise the Minister to transfer certain decisions (perhaps certain decisions about compliance) to CDP provider staff and, unless he determined otherwise, s 144(da) would preclude merits review of these decisions.
>
> …Assurances in the Department's submission about the Minister's current intentions are lacking in detail and are no substitute for legislated appeal rights.[25]

1.35 In evidence to the Committee, Mr Gerard Thomas of the Sydney Welfare Rights Centre said in relation to the appeals process changes:

> This measure is unprecedented, as far as I am concerned, and Welfare Rights does not know of any other precedent in this area.[26]

1.36 When asked about their responsibilities in handling appeals processes, a provider noted in evidence to the Committee that several questions had not been resolved:

> It was raised in the conference this week, and we have also raised it in discussions with the department previously. The answer we have been given has not been clear, because it has not been drafted in a regulation yet. The query that we had was: would our staff members in making these decisions be protected in any way? What sort of safeguards are there? Again, it has not been written into any legislation. It would be in the regulation. But the department acknowledged that that was an issue and that one of the options—and, again, it is a hypothetical option—is that there would be an extension to provider staff to be treated similarly or the same

24 *Submission 11*, p. 7.

25 *Submission 17*, pp 6-7.

26 *Proof Committee Hansard*, p. 8.

> as current DHS staff in the making of those decisions. They would see the same protections. Again, there is probably more devil in the detail, which would be in the regulations relating to that.[27]

1.37 Jobs Australia also highlighted concerns around the challenge in shifting responsibility for decisions to providers:

> The people in the Department of Human Services who undertake review processes are very highly trained, and very highly trained in the proper documentation and evidencing of and reasons for the administrative decisions they make in relation to income support. That is going to have to be provided to the staff of CDP providers. If they have to front the AAT or the Federal Court they will need legal representation, and that will have to be underwritten by the government as well.[28]

1.38 In a paper provided to the Committee late on the 26th of February, PM&C outlined a process under which:

- Job seekers will be able to request a review by the provider
- Job seekers will be able to appeal to PM&C, which can review a decision under Part 4 of the Social Security (Administration) Act 1999.
- Job seekers can appeal PM&C's decision to the Administrative Appeals Tribunal, under Part 4A of the Social Security (Administration) Act 1999.
- Job seekers can appeal the AAT decision to a second review and subsequently to the courts, in line with current arrangements.

1.39 The paper says that provider employees would not be required to appear during the AAT process.

1.40 While the provision of this outline provides further detail, it also raises a number of concerns, such as PM&C's role as the appeal body, without any expertise in this area, and the potential for pressure to be applied on local providers over reviewing decisions. It is also concerning that this process is not clear from the legislation, as reflected in a number of submissions; it is unclear why this policy intent has not been reflected in the Bill.

Employment conditions

1.41 The Australian Council of Trade Unions, among others, also highlighted concerns over the workplace conditions of people undertaking Work for the Dole under the CDP. Ms Karalyn Keys said:

> Our concerns centre on workers' rights, occupational health and safety, consultation and the possibility for discrimination under this program. In terms of workers rights, this Community Development Program is open to government agencies and now commercial businesses to take on or have access to Work-for-the-Dole workers. There are obviously a number of

27 Mr Jeremy Kee, CEO Miwatj Employment and Participation, *Proof Committee Hansard*, p. 34.

28 Mr David Thompson, *Proof Committee Hansard*, p. 16.

> concerns with that. Regarding the increase to income thresholds, we think that there is an opportunity for increased earning capacity for workers. However, we would say that it establishes unequal and discriminatory workplace practices, especially in relation to the minimum wage and standard conditions of employment.
>
> As outlined in our submission, this opens up the possibility that a worker could be engaged in a private for-profit company for 25 hours a week, working for well below the minimum wage, and then for any additional hours of extra work for that employer, at the same workplace, doing the same job, would be entitled to the minimum wage and minimum standards of employment…
>
> We are also concerned about occupational health and safety implications. The CDP legislation specifically excludes these workers from federal workplace health and safety and compensation legislation. It is very vague at best as to how state and territory occupational health and safety, and workers compensation, legislation would apply to these workers. In a situation where someone has a very serious workplace injury or a death, there is no certainty that that worker or their family would be able to access the safety net that is provided for every other Australian worker.
>
> Secondarily, there is no established clarity about who would be responsible for compliance with the occupational health and safety, and workers compensation, legislation. So is it the CDP provider or is it the host employer? There is no clarity around that so, clearly, we hold some concerns about how that would play out on the ground.[29]

Incentives for applying penalties

1.42 While many providers will face challenges in applying sanctions, there is a direct incentive in the payment scheme to impose sanctions. Peter Davidson from ACOSS said:

> Basically, a provider has several options if a job seeker does not meet the requirements in attending an interview or attending Work for the Dole. One of them is to apply an immediate sanction, the other is to use other strategies to try to re-engage the person, like allowing them to make up time for missed activities at another time or rescheduling appointments.
>
> The guidelines provide that the provider will be paid if they are able to re-engage the person within two weeks, so the provider could be in a scenario where they choose not to sanction the person for a range of reasons because they think there is the possibility of re-engaging them because they are concerned about the impact on the job seeker and they would prefer to re-engage them rather than sanction them, but if they are not successful in doing so, then they have invested a lot of time but they have received no payment for that work at the end. That puts all of the risk upon the provider in terms of the strategies that they use, whereas if they just used sanctions, then they would receive the payment for the amount of work they have

29 *Proof Committee Hansard*, p. 20.

> done. We see that this bill is an incentive towards sanctioning rather than engaging in other strategies.[30]

The Community Investment Fund

1.43 In response to questions on notice, the department said that the detail of how the Community Investment Fund (CIF) was still being developed, but said:

> The exact operational arrangements for the Community Investment Fund are yet to be determined … it is proposed that funds that have been withheld as a result of penalties will be put back into communities, to assist local economic and community development initiatives and programmes … The Community Investment Fund will be delivered through the Indigenous Advancement Strategy (IAS). IAS funding is administered by the Indigenous Affairs portfolio within the Department of the Prime Minister and Cabinet.
>
> There are likely to be significant complexities in the process of returning funds to communities, but it is important to ensure this occurs. The Indigenous Advancement Strategy continues to be plagued by significant implementation problems, which have had devastating impacts on Aboriginal communities. For those reasons, it is concerning that appropriate consultation has not yet been undertaken, but is being postponed until the finalisation of the legislative instrument.[31]

Patronage

1.44 This shift in decision making to local providers has significant implications, and poses a real risk of wide-spread problems in the system. Several submissions noted that this would create challenges for providers who hire staff from their community, who will then be responsible for decision making in relation to other members of their communities.

1.45 Mr Peter Davidson of ACOSS stated in evidence to the Committee:

> All of the incentives for providers and recipients of CDP services point to the entrenchment of a new system of patronage in remote communities, where people's survival depends increasingly on their performance of activities for a service provider. Even if they secure part-time employment, their dependency on the provider continues. Incentives are weak for individuals and providers to assist people to move towards financial independence and for communities to take hold of their own futures. There is a risk that this will entrench a system of patronage that is similar to the mission arrangements that existed in many of those communities decades ago.[32]

1.46 Jobs Australia noted in their submission:

---

30 Mr Peter Davidson, Policy Officer ACOSS, *Proof Committee Hansard*, pp 11-12.

31 PM&C, Answers to Questions on notice, received 26 February 2016, p. 56.

32 *Proof Committee Hansard*, p. 6.

> A further complication is the fact that providers often source their staff from the local community. That means that the people charged with responsibility for making decisions about benefit payments will also have relationships with people in the community – they will be responsible for deciding whether to apply sanctions to people who are their neighbours, friends, and family members. In situations where the job seeker is known to the staff member, it is almost impossible for decisions to be made with the same kind of impartial assessment that would be undertaken by a stranger in DHS.[33]

Concerns about the safety of provider employees

1.47 An additional concern was raised in relation to the protection of the employees of service providers. One service provider, the Tiwi Islands Training and Employment Board, said in their submission:

> Currently, our staff report non-participation to the Department of Human Services (DHS), and it is DHS staff who make the decision about any reduction in benefit payments. This means that when angry people approach our staff and ask why their benefits have been reduced, we can refer them to DHS. DHS has systems in place to address staff safety and, in most cases, manages these conversations by phone. If our staff are to be entirely responsible for decisions about people's benefits, then it's inevitable that community members who are aggrieved at such a decision will confront our staff. We might be able to increase security at our offices, but that has a substantial cost and still leaves staff exposed outside of work hours or away from secure premises. It will make it harder for us to attract and retain local Indigenous people to work in delivering the program.[34]

Conclusion

1.48 Throughout the Committee process, clear evidence was provided through submissions and in the hearing that the proposed framework will fail to support Aboriginal people in remote communities. The Australian Greens oppose the measures in this bill, which are fundamentally flawed, will involve major implementation challenges, and will create further significant problems.

The Australian Greens recommend that the Social Security Legislation Amendment (Community Development Program) Bill 2015 not be passed.

1.49 However there is an urgent need to provide appropriate support in remote communities. We agree with the Government to the extent that the current approach to employment support in remote communities is failing and needs reform.

The Australian Greens recommend that the Government adopt an approach of consulting communities directly to develop policy approaches which are community initiated and have strong community involvement.

---

33 *Submission 11*, p. 7.

34 *Submission 4*, p. 2.

1.50 Some areas worth examining further include:

- The Indigenous Ranger program, which provides significant employment benefits, and strong environmental outcomes.
- The Aboriginal Peak Organisations Northern Territory (APONT) has proposed a model, which could be trialled in the Northern Territory, after appropriate consultation.[35] We urge the Government to review this proposal and work with community on a program that will not disadvantage Aboriginal and Torres Strait Islander peoples.

Senator Rachel Siewert

35 Australian Human Rights Commission, Social Justice and Notice Title Report 2015.

APPENDIX 1

Submissions and additional information received by the committee

Submissions

1 Ms Lisa Fowkes
2 Ms Hana Hallee
3 Dr Elise Klein
4 Tiwi Islands Training and Employment Board
5 Dr Kirrily Jordan
6 Community and Public Sector Union
7 ACTU
8 Professor Jon Altman
9 Department of the Prime Minister and Cabinet
10 Tangentyere Council Aboriginal Corporation
11 Jobs Australia
12 Campbell Page
13 Ropergulf Regional Council
14 Marra Worra Worra Aboriginal Corporation
15 National Employment Services Association
16 Miwatj Employment and Participation Ltd
17 National Welfare Rights Network
18 Northern Land Council
19 Dr Shelley Bielefeld
20 NSW Aboriginal Land Council
21 Australian Human Rights Commission
22 ACOSS
23 Aboriginal Peak Organisations Northern Territory
24 Winun Ngari Aboriginal Corporation
25 Central Land Council
26 Welfare Rights Centre Sydney

27 Ironbark Aboriginal Corporation

28 National Congress of Australia's First People

29 Arnhem Land Progress Aboriginal Corporation

30 North Australian Aboriginal Justice Agency

Answers to Questions taken on Notice

1 Answer to question taken on notice from Melbourne Public hearing, 19 February 2016, provided by Central Land Council, received 22 February 2016

2 Answer to question taken on notice from Melbourne Public hearing, 19 February 2016, provided by Miwatj Employment and Participation Ltd, received 22 February 2016

3 Answers to questions on notice from Melbourne Public Hearing, 19 February 2016, provided by PM&C, received 26 February 2016

4 Answers to questions on notice from Melbourne Public Hearing, 19 February 2016, provided by Job's Australia, received 1 March 2016

APPENDIX 2

Public hearing

Friday, 19 February 2016
Monash Conference Centre
30 Collins Street, Melbourne

Witnesses

Winun Ngari Aboriginal Corporation
Ms Susan Murphy, Chief Executive Officer
Mr Ben Burton, Deputy Chief Executive Officer and Manager of CDP program

Australian Council of Social Service
Mr Peter Davidson, Senior Policy Advisor
Ms Ro Evans, Policy Officer

Welfare Rights Centre Sydney
Mr Gerard Thomas, Policy and Media Officer

Jobs Australia
Mr David Thompson, Chief Executive Officer

ACTU
Mr Tallis Richmond, Director
Ms Kara Keys, Indigenous Officer

Northern Land Council (via teleconference) (Submission 18)
Mr Joe Morrison, Chief Executive Officer

Central Land Council (via teleconference) (Submission 25)
Ms Jayne Weepers, Manager Policy and Research, Central Land Council

Mr David Cooper, Manager Research, Advocacy and Policy, APO NT

Miwatj Employment and Participation Ltd

Mr Jeremy Kee, Chief Executive Officer

Marra Worra Worra Aboriginal Corporation

Ms Selina Middleton, (MWW Board Member)

Mr Dickie Bedford, (Chief Executive Officer)

Ms Lena McGinty, (Deputy Head MWW Employment Department)

Mr Henrik Loos, (HR & Operations Manager)

Arnhem Land Progress Aboriginal Corporation

Mr Chris Hayward, General Manager of Enterprise and Community Services

Mr Liam Flanagan, Community Services Manager

Professor Jon Altman, private capacity

Department of the Prime Minister and Cabinet

Mr Richard Eccles, Deputy Secretary Indigenous Affairs

Ms Nadine Williams, First Assistant Secretary, Community and Economic Development

Mr Ryan Bulman, Assistant Secretary, Policy and Programme Delivery

Ms Maya Stuart-Fox, Assistant Secretary, Economic Development Policy

Department of Human Services

Ms Melissa Ryan, General Manager, Participation Division