

# Chapter 2

## Key issues

### Introduction

2.1 This chapter outlines some of the key issues raised by submitters and witnesses in relation to the Social Security Legislation Amendment (Community Development Program) Bill 2018 (bill).

2.2 The majority of submitters and witnesses to the inquiry agreed that reforms to the Community Development Program (CDP) were required. However, they also raised concerns that the measures proposed in the bill did not constitute appropriate reform to the CDP.<sup>1</sup>

2.3 Participants in the inquiry particularly commented on the following aspects of the bill:

- appropriateness of applying the TCF to CDP participants;
- effectiveness of the demerits and penalties system;
- reduction in work hours from up to 25 hours to up to 20 hours per week;
- increased role of local health providers; and
- subsidised employment positions.

### Application of the TCF to CDP participants

#### *General comments*

2.4 As noted in Chapter 1, the bill extends the TCF to apply to job seekers in remote Australia. The TCF commenced for urban and regional Australia on 1 July 2018, and introduced a new system of demerits and financial penalties that were designed to focus on participants who are persistently and wilfully non-compliant.<sup>2</sup>

2.5 A majority of participants in the inquiry considered that it was not appropriate to extend the application of the TCF to CDP participants.<sup>3</sup>

2.6 Submitters noted that when the TCF was announced as part of the 2017–18 Budget, it was made clear that the program was designed specifically for urban and

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1 See for example: National Social Security Rights Network, *Submission 2*; Aboriginal Peak Organisations Northern Territory, *Submission 4*; Australian Council of Social Service, *Submission 6*, p. 2; Ngaanyatjarra Council and the Shire of Ngaanyatjarraku, *Submission 19*, p. 3; National Aboriginal Community Controlled Health Organisation, *Submission 20*, p. 2.

2 Explanatory Memorandum, p. 3.

3 See for example: National Social Security Rights Network, *Submission 2*; Aboriginal Peak Organisations Northern Territory, *Submission 4*; Australian Council of Social Service, *Submission 6*, p. 2; Ngaanyatjarra Council and the Shire of Ngaanyatjarraku, *Submission 19*, p. 3; National Aboriginal Community Controlled Health Organisation, *Submission 20*, p. 2.

regional Australia, and did not take into account the particular circumstances of job seekers in remote Australia.<sup>4</sup> In particular, Miwatj Employment and Participation highlighted that 'the TCF was never designed or intended to apply to remote areas, and that TCF consultations never included remote stakeholders'.<sup>5</sup>

2.7 The National Employment Services Association (NESA) also considered that the introduction of the TCF did not specifically respond to 'feedback provided as part of consultations or iterative policy discussions on compliance held in previous years'.<sup>6</sup>

2.8 The National Congress of Australia's First Peoples (National Congress) commented that the TCF was not 'designed in collaboration with Aboriginal and Torres Strait Islander peoples, communities and organisations'.<sup>7</sup> Similarly, Jobs Australia considered that the decision to apply the TCF to CDP did not involve adequate consultation with providers and it does not reflect their views.<sup>8</sup>

2.9 NESA submitted that the TCF was designed to operate within non-remote locations across Australia, and considered that more work needed to be done before the TCF could be effectively implemented in remote Australia:

As such, there is a need to consider [the TCF's] relevance and application in remote Australia, the conditions of remote Australia are significantly different to those in non-remote Australia. Given these high levels of variation, it is critical that time is taken to understand how the TCF would operate in remote locations, and what modifications are required to both the TCF itself, and to other programme elements to ensure that the TCF contributes positively to engagement.<sup>9</sup>

2.10 The Arnhem Land Progress Aboriginal Corporation (ALPA) submitted that their Board 'categorically rejects the notion that a one size fits all approach will deliver equity for participants in the Community Development Program', commenting that:

A failure to recognise factors that are not present in most urban settings such as overcrowded housing, the lack of specialist services and supports to address barriers to participation, cultural obligations and the collectivist

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4 See for example: Miwatj Employment and Participation, *Submission 1*, p. 1; Arnhem Land Progress Aboriginal Corporation, *Submission 5*, p. 3; National Congress of Australia's First Peoples, *Submission 7*, p. 3; Jobs Australia, *Submission 8*, p. 6; National Employment Services Association, *Submission 15*, p. 7; Human Rights Law Centre, *Submission 17*, p. 8.

5 Miwatj Employment and Participation, *Submission 1*, p. 1.

6 National Employment Services Association, *Submission 15*, p. 7.

7 National Congress of Australia's First Peoples, *Submission 7*, p. 3. See also: Miwatj Employment and Participation, *Submission 1*, p. 1.

8 Jobs Australia, *Submission 8*, p. 3.

9 National Employment Services Association, *Submission 15*, p. 7. See also: Jobs Australia, *Submission 8*, p. 3; Human Rights Law Centre, *Submission 17*, p. 8.

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nature of many Indigenous communities demonstrated that this framework is unlikely to be fit for purpose.<sup>10</sup>

2.11 However, officials from the Department of Prime Minister and Cabinet (DPM&C) clarified that the purpose of introducing the TCF nation-wide was to 'ensure that all jobseekers across Australia are subject to a nationally consistent compliance framework'.<sup>11</sup> Further, officials explained:

The aim of the TCF is to support vulnerable participants through increased support and reduced interactions with Centrelink and to provide more checking points with service providers, so that all jobseekers have every opportunity to meet their mutual obligations. Local CDP providers, almost all of whom are now Indigenous organisations, will work with CDP participants and their communities in the application of the TCF.<sup>12</sup>

### ***Penalties***

2.12 As explained in Chapter 1, the TCF introduces a new system of demerits and penalties for CDP participants. Officials from DPM&C outlined the impact the bill would have in relation to penalties:

As a package, the reforms will reduce the number of penalties applied to CDP jobseekers, and the introduction of the TCF will remove penalties for one-off breaches of mutual obligation requirements, and financial penalties will focus on people who were persistently and wilfully non-compliant.<sup>13</sup>

2.13 A number of submitters to the inquiry considered that the introduction of the TCF may not reduce the high levels of penalties currently applied to CDP participants.<sup>14</sup>

2.14 The National Social Security Rights Network (NSSRN) noted that the government has provided modelling on the possible application of penalties to CDP participants under the new compliance framework. This modelling suggests that 'during the first year of the TCF being applied to the new CDP model that over 4000 people will have their payments cancelled for 4 weeks, and in the second year this number will rise to over 6500 people'.<sup>15</sup> NSSRN considered that:

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10 Arnhem Land Progress Aboriginal Corporation, *Submission 5*, p. 2.

11 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 47.

12 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 47.

13 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 47.

14 See for example: National Social Security Rights Network, *Submission 2*, p. 5; Ms Lisa Fowkes, *Submission 3*, p. 3. Jobs Australia, *Submission 8*, p. 7.

15 National Social Security Rights Network, *Submission 2*, p. [6].

...this represents significant numbers of people who will be penalised under the TCF. We understand that this data is based on old CDP penalty data from 2015–16, rather than the current penalty figures which are higher. We are concerned that TCF will actually result in higher penalties than anticipated.<sup>16</sup>

2.15 In answers to questions on notice, DPM&C noted that the TCF provides more protections to job seekers who turn up and participate, to ensure only job seekers who are deliberately non-compliant progress to financial penalties.<sup>17</sup>

#### *One-off breaches*

2.16 Under the current compliance framework, 'no-show no-pay' penalties are applied. However, under the proposed TCF model, a one-off breach will not incur a financial penalty.<sup>18</sup> This system places the responsibility for determining when to apply a demerit with a CDP provider. Ms Chloe Bird, Assistant Secretary from DPM&C explained:

They're actually going to get a chance to discuss with their provider the circumstances that might have led to them not, for instance, attending their activity. The provider will then have an opportunity to talk to that person, understand the circumstances that led to them not being able to attend that activity and consider whether there was a reasonable excuse with reference to a number of different things which are similar to what are in place at the moment. Only if the provider assesses that the individual didn't actually have a reason for not being able to comply with that requirement—should have and couldn't have—do they apply demerit, and the demerit doesn't result in a financial penalty.<sup>19</sup>

2.17 Regional Anangu Services Aboriginal Corporation (RASAC) supported the relaxation of penalties for one-off breaches:

As we understand the new arrangements, a non-compliance event would trigger a suspension of payments, prompting CDP participants to re-engage with their provider. Providers would then have the opportunity to discuss the circumstances of the non-compliance with the CDP participants before determining if demerits would be applied. We support this approach.<sup>20</sup>

2.18 In contrast, the Australian Council of Social Service (ACOSS) noted that, under the previous system, the recommendations of providers to apply a breach were

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16 National Social Security Rights Network, *Submission 2*, p. [6].

17 Department of Prime Minister and Cabinet, answer to question on notice, 21 September 2018 (received 5 October 2018).

18 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 48.

19 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 49.

20 Regional Anangu Services Aboriginal Corporation (RASAC), *Submission 11*, p. 2.

often overturned by DHS and that the proposal to give providers the responsibility for determining when to apply demerits was inflexible.<sup>21</sup> Similarly, Jobs Australia noted that:

Under the current compliance framework, DHS rejects at least 60% of provider recommendations for penalties on a case by case basis due to provider mistakes, or because its own backlog in assessing breaches means that a penalty cannot be applied. Reducing the level of scrutiny applied by DHS while job seekers are in the Warning Zone is likely to lead a more rapid accumulation of demerits than would otherwise occur with DHS involvement each time a failure occurs.<sup>22</sup>

2.19 Ms Rosemary Deininger, Acting Deputy Secretary, DHS noted that DHS would have the opportunity to review the application of demerits by providers.<sup>23</sup> This review would happen when a CDP participant received three demerits, as part of the capability interview. DHS also has the ability to overturn demerits previously applied by a provider.<sup>24</sup>

2.20 DPM&C also noted that 'no-show no-pay' penalties currently make up 83 per cent of all penalties for CDP participants, removing these penalties would therefore allow the TCF to focus on stronger penalties for persistent non-compliance.<sup>25</sup>

#### *Four week non-payment period*

2.21 The most severe penalty that can be applied as part of the TCF is a four week non-payment period. This means that a person's income support payment is cancelled and they will not be eligible to re-apply for payments until the preclusion period has passed. This penalty is applied to people considered to be persistently non-compliant.<sup>26</sup>

2.22 RASAC supported the proposed reduction of the payment cancellation period from eight weeks to four weeks, contending that the eight week period was too long and had 'devastating effects for the livelihoods of families in the APY Lands'.<sup>27</sup>

2.23 Some submitters raised concerns about the four week non-payment period, in particular, the need for a participant to re-apply for payment.<sup>28</sup> Ms Lisa Fowkes, a

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21 Ms Charmaine Crowe, Senior Policy and Advocacy Officer, Australian Council of Social Service, *Committee Hansard*, 21 September 2018, p. 4.

22 Jobs Australia, *Submission 8*, p. 7.

23 Ms Rosemary Deininger, Acting Deputy Secretary, Programme Design, Department of Human Services, *Committee Hansard*, 21 September 2018, p. 52.

24 Ms Rosemary Deininger, Acting Deputy Secretary, Programme Design, Department of Human Services, *Committee Hansard*, 21 September 2018, p. 52.

25 Department of Prime Minister and Cabinet, answer to question on notice, 21 September 2018 (received 5 October 2018).

26 National Social Security Rights Network, *Submission 2*, p. 5.

27 Regional Anangu Services Aboriginal Corporation (RASAC), *Submission 11*, p. 2.

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Researcher for the Centre for Aboriginal Economic Policy Research considered that the re-application process was a barrier to participants re-engaging with CDP:

In addition, those who receive 4 week penalties will have their payments cancelled altogether, so that they will have to re-apply for payments. Again, this is much more difficult for people in remote areas who may have language barriers, lack access to a phone or, in some cases, have underlying cognitive or health impairments.<sup>29</sup>

2.24 Jobs Australia pointed out that although the TCF penalties system would reduce the maximum non-payment period, it would also remove the ability to have outstanding penalties waived following re-engagement, which is possible under the current arrangements. Jobs Australia considered that there is a risk that people will become 'trapped in the Penalty Zone indefinitely, or otherwise disengage because it is too difficult to comply'.<sup>30</sup>

2.25 NSSRN noted that the four week non-payment period is also applied to people who refuse to accept work, voluntarily leave a job, or are dismissed from work due to misconduct (with some limited exceptions). NSSRN particularly expressed concern that individuals experiencing crises, such as the onset of psychiatric mental illness or exposure to family violence, 'may struggle to remain engaged with their required job activities and lose access to income despite their vulnerabilities'.<sup>31</sup>

2.26 RASAC noted however, that the proposed new system of demerits and penalties as applied through the TCF includes a series of steps before progressive penalties are applied. RASAC considered this would likely be an improvement over the current arrangement.<sup>32</sup>

2.27 Ms Bird from DPM&C confirmed that the proposed reforms to penalties would mean that CDP participants would be subject to fewer financial penalties:

...under the current framework an individual can receive three financial penalties before a comprehensive compliance assessment is undertaken. Under the new framework an individual won't receive any financial penalties before a similar opportunity for a capability interview with the provider. There's also an opportunity for a capability assessment, and there are no financial penalties in that early stage. They're some of the additional protections we see as existing within the TCF to encourage that ongoing

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28 See for example: Miwatj Employment and Participation, *Submission 1*, p. 2; National Employment Services Association, *Submission 15*, p. 9; CatholicCare NT and Atyenhenge-Atherre Aboriginal Corporation, *Submission 10*, p. [2].

29 Ms Lisa Fowkes, *Submission 3*, p. 3.

30 Jobs Australia, *Submission 8*, p. 7. See also: CatholicCare NT and Atyenhenge-Atherre Aboriginal Corporation, *Submission 10*, p. [1].

31 National Social Security Rights Network, *Submission 2*, p. 5.

32 Regional Anangu Services Aboriginal Corporation (RASAC), *Submission 11*, p. 2.

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continuous engagement with the individual to understand their personal needs.<sup>33</sup>

### ***Additional protections***

2.28 The explanatory memorandum notes that the introduction of the TCF will 'ensure additional protections for all CDP participants, and build in more check points to ensure they are fully capable of meeting their requirements'.<sup>34</sup> These check points include a capability interview and capability assessment of a CDP participant's ability to undertake activities.<sup>35</sup>

2.29 Ms Lisa Fowkes noted that under the existing compliance framework, the Department of Human Services (DHS) must conduct a 'Comprehensive Compliance Assessment' after a job seeker incurs three penalties. This assessment is designed to determine whether a participant is 'persistently non-compliant' or whether there is an underlying capability issue that has led to breaches of obligations. Ms Fowkes considered that this assessment appears similar in intent to the 'capability assessment' that would be conducted by DHS under the TCF.<sup>36</sup>

2.30 The introduction of the TCF would add a 'capability interview' to be conducted by providers before job seekers enter the 'penalty zone'. Ms Fowkes explained that capability interviews 'will be structured by an on-line system that prompts provider staff to test the participant's understanding of their obligations and seek disclosure of any circumstances that may limit their capacity to comply'.<sup>37</sup>

2.31 Mr Liam Flanagan, General Manager of Community Services at ALPA noted that:

Conversations that we've had with the department and with the minister's office have certainly implied that we'll be in a position to take into account a broad range of social and economic impacts on people, such as overcrowding and cultural obligations<sup>38</sup>

2.32 In answers to questions on notice, DPM&C confirmed that under the TCF, a job seeker will have greater direct interaction with their local provider:

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33 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 58.

34 Explanatory Memorandum, p. 3.

35 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 58.

36 Ms Lisa Fowkes, *Submission 3*, p. 4.

37 Ms Lisa Fowkes, *Submission 3*, p. 5.

38 Mr Liam Flanagan, General Manager Community Services, Arnhem Land Progress Aboriginal Corporation, *Committee Hansard*, 21 September 2018, p. 30.

The provider can take a job seeker and community's local circumstances into account when considering whether it was reasonable for a job seeker not to attend an activity, or meet a requirement.<sup>39</sup>

2.33 Submitters noted that the bill retains the option for CDP participants to access the 'reasonable excuse provisions' available for drug or alcohol abuse, and commented that these provisions were removed for jobseekers in non-remote areas as result of the *Social Services Legislation Amendment (Welfare Reform) Act 2018*. NSSRN and ACOSS strongly supported the continuation of reasonable excuse provisions relating to drug or alcohol use for CDP participants.<sup>40</sup>

### **Reduction of mutual obligation hours**

2.34 The bill proposes to reduce the number of mutual obligation hours from up to 25 hours per week to up to 20 hours per week, depending on a job seeker's assessed work capacity.<sup>41</sup>

2.35 Participants in the inquiry supported this measure, but also considered that CDP participants would benefit from more flexibility regarding the time available for the completion of mutual obligation hours.<sup>42</sup> In particular, Miwatj Employment and Participation commented:

...the inability to allow these hours to be fulfilled over a flexible week—in and around an individual's family and cultural obligations—remains an ongoing barrier to CDP engagement.<sup>43</sup>

2.36 Ms Madonna Tomes from RASAC shared this view and proposed:

...consideration be given to enabling CDP participants to complete their hours over a period of time—for example, over a fortnight rather than in a strictly daily commitment. This would enable some flexibility about the nature of activities that can be provided. For example, some worthwhile activities in remote areas don't fit neatly into a four- or five-hour framework. It also enables participants to have flexibility around their personal commitments.<sup>44</sup>

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39 Department of Prime Minister and Cabinet, answer to question on notice, 21 September 2018 (received 5 October 2018).

40 National Social Security Rights Network, *Submission 2*, p. [6]; Australian Council of Social Service, *Submission 6*, p. 2.

41 Explanatory Memorandum, p. 3.

42 See for example: National Congress of Australia's First Peoples, *Submission 7*, p. 4; Ironbark Aboriginal Corporation, *Submission 9*, p. [1]; Regional Anangu Services Aboriginal Corporation (RASAC), *Submission 11*, p. 2; Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 12*, p. 1; Australian Human Rights Commission, *Submission 16*, p. 6.

43 Miwatj Employment and Participation, *Submission 1*, p. 2.

44 Ms Madonna Tomes, Workforce Development Coordinator, Regional Anangu Services Aboriginal Corporation, *Committee Hansard*, 21 September 2018, p. 26.



2.37 Ms Lisa Fowkes also considered that more flexibility around the completion of mutual obligation hours had the potential to reduce the number of demerits and penalties applied to CDP participants:

Regardless of whether participants might have the physical capacity to meet their obligations, and understand them, there is an underlying problem of the level of obligation (5 days per week, indefinitely) being unfair, disproportionate to local opportunities, and irrelevant to their needs. It is simple maths that someone asked to attend more often, will slip up more often. Until this is addressed, CDP participants will be subject to more penalties.<sup>45</sup>

2.38 The Ngaanyatjarra Council and the Shire of Ngaanyatjarraku expressed concern that 'the impact of this reduction in hours will have limited, if any, real effect on the ability of the Aboriginal job seeker to meet their mutual obligation requirements under CDP'.<sup>46</sup>

2.39 A number of submitters pointed out that, although the bill proposes to reduce CDP participants' mutual obligation hours, these individuals will still be required to complete more hours than other job seekers in Australia.<sup>47</sup> For example, NSSRN pointed to the 'more onerous requirements of the CDP' as a factor in what they considered to be the 'disproportionate application of penalties to CDP participants':

Despite some relaxation of the CDP requirements, the program remains onerous and we are very concerned that many people on the CDP will quickly accumulate demerit points, putting them at risk of non-waivable financial penalties. This is especially concerning given the ongoing lack of discretion available to employment service providers and the limited options to challenge the issuing of a demerit point.<sup>48</sup>

2.40 Ms Lisa Fowkes also contended that CDP participants have more 'opportunities to fail' due to the higher number of activity hours expected of them, compared with other job seekers.<sup>49</sup>

2.41 The NSW Aboriginal Land Council (NSWALC) noted that the bill proposes to standardise the compliance framework, but not the mutual obligation requirements. NSWALC commented:

In the explanatory memorandum to the draft Bill, the Government states 'some of these mutual obligation requirements will be different to participants in non-remote areas as these obligations have been designed to take into account the unique nature of remote labour markets'. NSWALC

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45 Ms Lisa Fowkes, *Submission 3*, p. 6.

46 Ngaanyatjarra Council and the Shire of Ngaanyatjarraku, *Submission 19*, p. 3.

47 See for example: National Social Security Rights Network, *Submission 2*, p. [4]; Aboriginal Peak Organisations Northern Territory, *Submission 4*, p. 2; Jobs Australia, *Submission 8*, p. 3; North Australian Aboriginal Justice Agency, *Submission 14*, p. 7.

48 National Social Security Rights Network, *Submission 2*, p. 5.

49 Ms Lisa Fowkes, *Submission 3*, p. 3.

strongly submits, however, that remote conditions are no justification for imposing more onerous requirements.<sup>50</sup>

2.42 The explanatory memorandum noted that the reduction in mutual obligation hours for CDP participants would assist them in meeting their requirements.<sup>51</sup> Officials from DPM&C also advised the committee that the reduction of mutual obligation hours was only one aspect of the broader reforms which would 'increase engagement and compliance with the program overall'.<sup>52</sup>

### **Increased role for local health providers**

2.43 As noted in Chapter 1, the bill will introduce a number of changes to increase the role of local health service providers. In particular, local health workers will be able to supply evidence to the Department of Human Services, which can be used when deciding whether to reduce a participant's mutual obligation hours.<sup>53</sup>

2.44 While submitters to the inquiry supported the intent of this measure, they also noted that there may be some practical difficulties in implementing this change.<sup>54</sup>

2.45 In particular, the Aboriginal Peak Organisations Northern Territory (APO NT) noted that health services operating in remote communities are struggling with their current workload:

Health services [...] are already working at or over capacity and are facing additional demands associated with assessments required under the NDIS as well as through increased referrals for FASD [fetal alcohol syndrome disorder] and other developmental impairment assessments.<sup>55</sup>

2.46 APO NT said that 'given the complexity of undertaking assessments in remote communities and the high level of disability and illness that is currently not being identified through existing mechanisms, careful consideration needs to be given to an effective process in relation to assessments for CDP'.<sup>56</sup>

2.47 RASAC agreed with the intent of the measure to enable local health service providers to have an increased role, but noted that this proposal held significant challenges for locations such as the APY lands where there is only one health provider

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50 NSW Aboriginal Land Council, *Submission 21*, p. 5.

51 Explanatory Memorandum, p. 3.

52 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 50.

53 Explanatory Memorandum, pp. 3–4.

54 See for example: Miwatj Employment and Participation, *Submission 1*, p. 2; Arnhem Land Progress Aboriginal Corporation, *Submission 5*, pp. 4–5; National Congress of Australia's First Peoples, *Submission 7*, p. 4; North Australian Aboriginal Justice Agency, *Submission 14*, p. 9.

55 Aboriginal Peak Organisations Northern Territory, *Submission 4*, pp. 3–4.

56 Aboriginal Peak Organisations Northern Territory, *Submission 4*, pp. 3–4.

across the lands, which operates with fly-in fly-out medical practitioners on a roster basis only.<sup>57</sup>

2.48 Ms Jaala Hinchcliffe, from the Office of the Commonwealth Ombudsman welcomed the increased role of local health providers, commenting:

We've raised some barriers to obtaining employment service assessments and medical evidence to be able to then have those assessments. We're pleased to see the changes that come in the government's proposal to enable local health workers—that is, community nurses—to be able to provide some of that evidence.<sup>58</sup>

2.49 Ms Deb Lewis, First Assistant Secretary with DPM&C advised the committee that this measure of the bill would improve capacity assessment processes.<sup>59</sup>

### **Subsidised employment**

2.50 The proposed legislation will support the creation of 6 000 subsidised jobs in remote Australia. The explanatory memorandum notes that these jobs will only be available to CDP participants, and that they are 'designed to grow the size and capacity of the remote labour market and support the development of more local business'.<sup>60</sup>

2.51 Officials from DPM&C explained that this measure included a safety net for those participants in subsidised employment positions, in the event that they should leave that position:

If you commence a subsidised job, you may well be in a situation where you don't continue to receive income support. In those circumstances, they will potentially come off the case load, but they'll retain a connection with the CDP provider, if that makes sense, so they won't have a formal reporting requirement, but in the first month in particular the CDP provider would have an ongoing role with support to help the person settle into the job and provide that ongoing support. Should they, for instance, leave that job for some reason, they'll maintain a connection with the CDP program so that they can immediately reconnect with it.<sup>61</sup>

2.52 The majority of participants in the inquiry supported this measure, welcoming the government's commitment to addressing the lack of jobs in remote communities.

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57 Regional Anangu Services Aboriginal Corporation (RASAC), *Submission 11*, p. 3. See also: North Australian Aboriginal Justice Agency, *Submission 14*, p. 9.

58 Ms Jaala Hinchcliffe, Acting Ombudsman, Office of the Commonwealth Ombudsman, *Committee Hansard*, 21 September 2018, p. 51.

59 Ms Deb Lewis, First Assistant Secretary, Community and Economic Development Division, Department of the Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, pp. 47–48.

60 Explanatory Memorandum, p. 4.

61 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 51.

Participants also noted that some of the details are yet to be released by government.<sup>62</sup> In particular, NSSRN supported investment in new wage subsidy positions, noting these 'will provide real wages (minimum wage or above), as well as superannuation and other entitlements that flow from regular work arrangements'.<sup>63</sup>

2.53 Miwatj Employment and Participation noted its support for these provisions 'with the caveat that far more consultation and scenario-testing is required before a suite of guidelines can be developed that brings tangible positive change without creating an artificial labour economy'.<sup>64</sup>

2.54 Submitters noted that some of the details yet to be provided included whether the subsidised employment positions would be full time or part time positions.<sup>65</sup> As well as projections of how the scheme will operate:

...including how many employers may be in a financial position to support the subsidised positions, whether certain CDP participants will be targeted to enter into subsidised employment and what the projected outcomes of this scheme will be for CDP communities over time. There are also very few subsidised roles available.<sup>66</sup>

2.55 Ironbark Aboriginal Corporation expressed concerns about the relationship between providers and people in subsidised employment, noting that:

The Explanatory Memorandum indicates there will be no CDP requirement or mutual obligation for those who enter a subsidised job and yet indicates participants will still be accessing a level of support from CDP providers.<sup>67</sup>

### ***Exemptions***

2.56 The explanatory memorandum to the bill sets out that those CDP participants who hold a subsidised employment position will be exempt from activity test requirements and will therefore not incur mutual obligation failures under the TCF. This will also minimise the participant's engagements with the income support system.<sup>68</sup>

2.57 NESAs welcomed the measure which would allow job seekers in the job creation program to leave employment without incurring onerous penalties and proposed that the exemption be extended to all CDP participants.<sup>69</sup>

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62 See for example: National Social Security Rights Network, *Submission 2*, p. [2]; Arnhem Land Progress Aboriginal Corporation, *Submission 5*, p. 5; Australian Council of Social Service, *Submission 6*, p. 2; National Congress of Australia's First Peoples, *Submission 7*, p. 4.

63 National Social Security Rights Network, *Submission 2*, p. [2].

64 Miwatj Employment and Participation, *Submission 1*, p. 2.

65 North Australian Aboriginal Justice Agency, *Submission 14*, p. 18.

66 National Social Security Rights Network, *Submission 2*, p. [2].

67 Ironbark Aboriginal Corporation, *Submission 9*, p. [2].

68 Explanatory Memorandum, p. 4.

69 National Employment Services Association, *Submission 15*, p. 10.

2.58 Several submitters considered that the creation of subsidised employment positions had the potential to create a number of issues, including the incentive for employers to give preference to paid CDP workers over paid employees.<sup>70</sup> The Australian Human Rights Commission contended that:

A contributing factor to this trend is that providers and other employers in remote locations often have limited resources and the cost of living and labour in these locations is much higher. This means that CDP participants, as a cheap form of labour, are an attractive alternative to hiring employees working at least on the minimum wage with employment benefits such as superannuation.<sup>71</sup>

2.59 Ngaanyatjarra Council and the Shire of Ngaanyatjarraku pointed out that individuals employed under the scheme are likely to be the most 'job ready' and best placed to access secure casual or seasonal work when available.<sup>72</sup>

2.60 Ms Bird, Assistant Secretary from DPM&C noted that the exemptions for CDP participants in subsidised jobs, would allow them to focus on their new roles and on staying in these positions.<sup>73</sup>

2.61 Ms Bird also noted that CDP participants who enter into a subsidised employment position will still be registered in the CDP as a safety net. This means that in the event that a CDP participant needs to leave a subsidised employment position, they would be able to reconnect with the CDP quickly.<sup>74</sup>

### **Other matters raised**

2.62 Over the course of this inquiry the committee received a wide range of evidence from submitters and witnesses that, although not specific to the measures outlined in the bill, related to the CDP in a more broad sense. For example, some submitters noted that participation rates in CDP have fallen since 2015<sup>75</sup> and others expressed support for APO NT's alternative to the CDP outlined in its *Fair Work and Strong Communities: Remote Development and Employment Scheme (RDES)*.<sup>7677</sup>

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70 See for example: Aboriginal Peak Organisations Northern Territory, *Submission 4*, p. 5.

71 Australian Human Rights Commission, *Submission 16*, p. 6.

72 Ngaanyatjarra Council and the Shire of Ngaanyatjarraku, *Submission 19*, p. 5.

73 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 47.

74 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 51.

75 See for example: Ms Lisa Fowkes, *Submission 3*, p. 4; National Employment Services Association, *Submission 15*, pp. 8–9.

76 See for example: Australian Council of Social Service, *Submission 6*, p. 2; Jobs Australia, *Submission 8*, p. 7; Australian Council of Trade Unions, *Submission 13*, p. 2; North Australian Aboriginal Justice Agency, *Submission 14*, pp. 15–17; Australian Human Rights Commission, *Submission 16*, pp. 5–6.

2.63 The committee notes that several submitters and witnesses expressed an opinion that any ongoing concerns with the CDP should be addressed before the measures proposed in the bill are implemented.<sup>78</sup>

2.64 In order to address these issues, officials from DPM&C advised that they are looking at ways of increasing engagement and compliance with the CDP program. In particular, DPM&C is:

...looking at moving to a lot more local Indigenous providers as well as looking to increase community participation in CDP in the way that activities are designed through starting to work and looking at community boards. There's a range of other programs, the improvements to the ESAt process and opening up more opportunities to provide different types of evidence.<sup>79</sup>

### **Committee view**

2.65 The committee considers that CDP is an important program for remote Australia, and that it has been successful because it ensures job seekers have real mutual obligation requirements and because communities are increasingly at the heart of CDP delivery. The committee believes that the reforms introduced in the bill will increase engagement and compliance with the CDP.

2.66 The reforms in this bill will see the TCF introduced nation-wide, ensuring that all jobseekers across Australia are subject to a nationally consistent compliance framework.

2.67 The committee acknowledges the concerns expressed by some submitters that the TCF was not specifically designed for remote communities. The committee also notes that the bill includes a number of measures which will assist in the transition of CDP participants to the TCF. In particular, the new demerits and penalties system will see the removal of 'no-show no-pay' penalties, and an increased focus on participants who are persistently and wilfully non-compliant. The reduction in mutual obligations hours, as well as the proposed increased role for local providers will further assist CDP participants in meeting their requirements.

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77 Aboriginal Peak Organisations Northern Territory, *Fair Work and Strong Communities: Remote Development and Employment Scheme (RDES)*, May 2017, [http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report\\_Online.pdf](http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf) (accessed 8 October 2018).

78 See for example: Australian Council of Social Service, *Submission 6*, p. 2; Jobs Australia, *Submission 8*, p. 7; Australian Council of Trade Unions, *Submission 13*, p. 2; North Australian Aboriginal Justice Agency, *Submission 14*, pp. 15–17; Australian Human Rights Commission, *Submission 16*, pp. 5–6.

79 Ms Chloe Bird, Assistant Secretary, Community and Economic Development Division, CDP Strategy, Department of Prime Minister and Cabinet, *Committee Hansard*, 21 September 2018, p. 50.

2.68 The committee considers that the additional protections contained in the bill will assist CDP participants to transition to the new framework and ensure they are fully capable of meeting their requirements.

2.69 The committee notes the creation of 6 000 subsidised employment positions, which will grow the size and capacity of the remote labour market and support the development of more local business. CDP participants who hold a subsidised employment position will be exempt from activity test requirements and will therefore not incur mutual obligation failures under the TCF, minimising the participant's engagements with the income support system.

2.70 The committee notes the broad support for the reduction in mutual obligation hours, the increased role for local health providers and the creation of 6 000 subsidised employment positions.

2.71 The committee considers that the reforms proposed in the bill are a step in the right direction, and notes that this package of reforms are in direct response to feedback from communities.

### **Recommendation 1**

**2.72 The committee recommends that the bill be passed.**

**Senator Lucy Gichuhi**

**Chair**

