



New South Wales
Aboriginal Land Council
www.alc.org.au

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Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: fpa.sen@aph.gov.au

Inquiry into the Social Security Legislation Amendment (Community Development Program) Bill 2015

The NSW Aboriginal Land Council (**NSWALC**) thanks you for the opportunity to provide comment on the Social Security Legislation Amendment (Community Development Programs) Bill 2015 (the **Amendment Bill**). NSWALC commends the commitment of the Government in attempting to address welfare dependency in rural and regional Australia. This letter offers some constructive comments to improve the Amendment Bill.

NSWALC is the peak representative Aboriginal organisation in NSW, with over 23,000 members across regional and metropolitan NSW. Pursuant to the *Aboriginal Land Rights Act* (1983), NSWALC has the following functions amongst others:

- The acquisition, control, and management of (and other dealings in) lands in accordance with the ALRA; including the claiming of unused Crown land;
- The protection and promotion of Aboriginal culture and heritage in NSW;
- The facilitation of business enterprises; and
- The provision of advice to the NSW Government of matters related to Aboriginal land rights.

Demographics

The 2011 Census provides that the employment for Aboriginal people in rural and regional parts of NSW was as high as 38 – 43 percent of people of working age. As referred to in the Minister's speech, it is estimated that one in five adults of workforce age are in receipt of some type of welfare support in rural and regional Australia. This is not just the case for Aboriginal communities but the general community as a whole.

Community Development Program

NSWALC is concerned that the Amendment Bill proposes to exclude Community Development Program (**CDP**) supported workers from basic employee entitlements during the period that they are employed under the program.

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www.ourmob.org.au

Head Office
Level 5, 33 Argyle Street
Parramatta NSW 2150
PO Box 1125
Parramatta NSW 2124
Tel: 02 9689 4444
Fax: 02 9687 1234

Western Zone
2/36 Darling Street
Riverview Business Park
Dubbo NSW 2830
PO Box 1196
Dubbo NSW 2830
Tel: 02 6885 7000
Fax: 02 6881 6268

Northern Zone
Suite 2-26, Park Avenue
Coffs Harbour NSW 2450
PO Box 1912
Coffs Harbour NSW 2450
Tel: 02 6659 1200
Fax: 02 6650 0420

Eastern Zone
50/24-26 Watt Street
Gosford NSW 2250
PO Box 670
Gosford NSW 2250
Tel: 02 4337 4700
Fax: 02 4337 4710

Southern Zone
Unit 22, 2 Yallourn Street
Fyshwick ACT 2609
PO Box 619
Queanbeyan NSW 2620
Tel: 02 6124 3555
Fax: 02 6280 5650

Far West Zone
Level 3, NSW State
Government Building,
32 Sulphide Street
Broken Hill NSW 2880
Tel: 08 8087 9587
Fax: 08 8087 3851

The Amendment Bill prescribes that:

A person is not taken to be any of the following merely because the person undertakes an activity in accordance with any obligation imposed by the determination:

- a. a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;
- b. an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
- c. an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- d. an employee for the purposes of the *Fair Work Act 2009*.¹

NSWALC notes commentary of the Parliamentary Joint Standing Committee on Human Rights, where in its analysis of the Amendment Bill it provides that “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.”²

Under article 2(1) of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), Australia has certain obligations in relation to the rights of an individual to access social security. These include: health care and sickness; old age, unemployment and workplace injury, family and child support, paid maternity leave, and disability support.³

NSWALC urges the Commonwealth Government and the Parliament to ensure that domestic legislation (such as the Amendment Bill) is developed in accordance with the ICESCR. As such, NSWALC recommends that the Government reviews s.4 of the Amendment Bill.

Under the Amendment Bill, a CDP supported worker will not be entitled to basic employment standards and would be required to work 25 hours a week (or 50 flexible hours over a fortnight) at a minimum rate of \$10.50 per hour which is significantly below the Australian minimum wage of \$17.29. This would significantly reduce a CDP workers take home pay and create a ‘second class of worker’.

NSWALC recognises that there are boom and busts in particular industries in regional economies - whether that is due to seasonal changes or fluctuations in the economy. Employers may generally see the CDP program as a way to access cheap workers for a limited period of time while not being burdened with the payment of employee benefits that would otherwise be owed.

While employers who prescribe to CDP are offered \$7,500.00 through Employer Incentive Funding as an inducement to employ ongoing CDP workers, it does not necessarily encourage employers to offer further employment as they may not be able to compensate employees to the same or higher standard as they were previously under a CDP supported place. It would be hard for an employer to make the financial sacrifice to take on a former CDP worker as a fulltime employer with full employment entitlements.

¹ Social Security Legislation Amendment (Community Development Program) Bill 2015, Courts Administration Legislation Amendment Bill 2015 (Commonwealth of Australia). s4 (a-d), p. 13-14.

² Australian Parliament, Thirty-Third Report of the 44th Parliament, Parliamentary Joint Standing Committee on Human Rights, 2016. Chapter 1, p. 8

³ Ibid.

Regional Jobs Community Program

The existing Regional Jobs Community Program (RJCP) has had success in providing Local Aboriginal Land Councils (LALCs) with opportunities to access employment to assist in undertaking works on Aboriginal owned land – whether that be for the purposes of fencing, noxious weed spraying and other land rehabilitation projects. Some LALCs in Western NSW have also had successful relationships with third party RJCP jobs providers who identify employees for this work.

However, there have also been concerns raised in relation to the lack of incentives for job seekers. For example a LALC in the North West of NSW has struggled to obtain interested employees to undertake meaningful paid work. This is because the payment through the RJCP is lower than minimum wage, and any additional work that contributes to over \$120.00 takes away benefits that employees would otherwise receive through a social security benefit. Job seekers have little incentive to work more than an estimated three extra hours per week before the social security benefit is reduced.

Education and Training Opportunities

Additional concerns raised by LALCs who utilise the RJCP/CDP programs as both employers and representatives of job seekers relate to the lack of education and training opportunities covered by these programs. Job seekers cannot count the hours of employment that they access through a CDP sponsored place towards secondary and tertiary qualifications or onsite work related training qualifications. Therefore, the CDP prevents job seekers from developing skilled labour qualifications or train towards finding skilled labour once they complete the work with an employer under the CDP.

Ministerial powers

NSWALC has concerns in relation to the proposed Ministerial oversight of particular aspects of the Amendment Bill which circumvents the opportunity for scrutiny by the Commonwealth Parliament. NSWALC is concerned about the proposed wide scope of the Minister to determine the social security rules that apply to CDP recipients (i.e. the obligations of social security recipients, conditions upon which exemptions can be made, and/or penalties for non-compliance).

NSWALC urges the Minister and the Department to clarify the extent of their powers.

Consultation

It is NSWALC's view that it is in the interest of the Government to undertake consultation with Aboriginal communities across NSW to ensure that the design of the CDP is based on community need and that implementation of the CDP system is well understood. Undertaking best practice consultation may provide communities and related businesses an opportunity raise concerns regarding the CDP prior to the passing of legislation.

NSWALC also notes that the CDP (and the previous Community Development Employment Program and the RJCP) has brought a level of social cohesion and sense of community back to small towns and remote communities. The CDP has given job seekers a sense of pride that they are participating in work that in turn reduces anti-social behaviour. However, it is recommended that the Government addresses concerns discussed in this letter in order to address issues of welfare dependency.

Thank you for the opportunity to comment on the Amendment Bill. NSWALC encourages the Committee to note NSWALC's concerns addressed within this letter.

Yours sincerely,

Lesley Turner
Chief Executive Officer
NSW Aboriginal Land Council