

8 June 2017

Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: fpa.sen@aph.gov.au

Re: The appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)

I welcome the opportunity to make a submission to the Committee on the CDP program. I make this submission as an academic with a disciplinary background in law whose research focuses on issues of public policy, regulation and governance, social justice, human rights and Indigenous peoples. I am currently undertaking a project on regulation, welfare conditionality, and Indigenous peoples as Braithwaite Research Fellow at the Australian National University.

1. There are Serious problems with the CDP Program

My previous submissions on the CDP program, Appendices A and B, outline many of my concerns about its *design, operation, ideological underpinnings, and human rights violations*.

In addition to these points, I note that the Aboriginal Peak Organisations Northern Territory (APONT) report *Developing Strong and Resilient Remote Communities*, highlights the following 'fundamental flaws' with the CDP program:

- The lack of Aboriginal community control or input into the program design, or delivery;
- The lack of emphasis on sustainable gains in employment, and inability to provide career pathways and long-term 'on the job' support;
- The program does not do enough to encourage enterprise development or stimulate job creation;
- The lack of flexibility in CDP implementation resulting in a complete inability to tailor arrangements to maximise positive outcomes in different regions and communities;
- The program is punitive and fundamentally fails to understand what drives change in remote Aboriginal communities;
- The program is focused on individuals at the expense of community development and engagement;
- There is a focus on short-term outcomes with no measurement of net gain to communities;

- Under CDP, most participants are required to do many more Work for the Dole hours than others in order to receive income support – meaning that participants are being set up to fail;
- The penalty regime is disproportionately impacting on remote Aboriginal people leading to food insecurity, greater poverty, and increased disengagement from the system entirely; and,
- Thousands of CDP participants are locked into work at a rate well below award rates, with no work entitlements or protections and with little or no prospect of earning additional income or leaving income support.¹

I share these concerns and urge the government to abandon this penalty-heavy compliance orientated regulatory system that has been inflicting significant harm upon Indigenous peoples.

APONT rightly point out that government rhetoric of ‘partnership’ does not match the reality of CDP:

The relationship between Government and service providers is not one of partnership, but of seeing organisations as instruments of government policy. Indigenous people and organisations are not empowered through the delivery of the program, in fact it is causing distress. Program rules are inflexible and ‘one size fits all’ – particularly in the 25-hour Work for the Dole requirements. Decision-making is top down.²

I recommend, with APONT, that any new system ‘be driven by community level decision-making, not centrally imposed rules’ from Canberra; and that such a system ‘include greater access to waged employment’ at award pay rates with emphasis on ‘incentives over punishment.’³ Such a system would have a crucial element necessary for success that the current CDP program lacks—community buy in.

2. CDP is a Badly Designed Regulatory System—Evidenced by High Levels of Defiance and Disengagement

The fact that there have been an extraordinary number of penalties applied to Indigenous people under CDP, as outlined by Lisa Fowkes,⁴ shows that something is gravely wrong with this program. Sound regulatory systems do not commence with a heavy-handed

* I express thanks to Professor Jon Altman for commenting on an earlier draft of this submission.

¹ Aboriginal Peak Organisations Northern Territory (APONT), *Developing Strong and Resilient Remote Communities: Proposal for Establishment of a Remote Development and Employment Scheme*, May 2017, p 12.

² Aboriginal Peak Organisations Northern Territory (APONT), *Developing Strong and Resilient Remote Communities: Proposal for Establishment of a Remote Development and Employment Scheme*, May 2017, p 32.

³ Aboriginal Peak Organisations Northern Territory (APONT), *Developing Strong and Resilient Remote Communities: Proposal for Establishment of a Remote Development and Employment Scheme*, May 2017, p 12.

⁴ Lisa Fowkes, ‘Impact on Social Security Penalties of Increased Work for the Dole Requirements’ (Canberra: Centre for Aboriginal Economic Policy Research Working Paper No. 112/2016, Australian National University, 2016) p 1-7.

punitive approach in the first instance – as does CDP with its mandatory five hours a day five days a week workfare requirement.

Valerie Braithwaite's psychosocial approach to regulation offers insight into specific problems that can occur with poorly designed regulatory systems. She highlights that impasses can occur when perceptions 'given to regulation by those being regulated' do 'not match that of regulators.'⁵ For instance, when rules are contested by those regulated then this can result in 'motivational postures' such as 'defiance' and 'disengagement'.⁶ It is evident from the government's own CDP penalty statistics that the program suffers from such deficiencies.⁷ The research of Lisa Fowkes shows a *rapid rise in penalties* under the CDP program. The APONT report also indicates that there are *major problems with disengagement*, which is especially high amongst Indigenous youth. APONT state that:

CDP has not been effective enough in attracting, engaging and supporting young people. In fact, some providers report that the program is driving young people away. Young people are deciding not to claim income support or disengaging completely from CDP in order to avoid what may be seen as irrelevant or onerous requirements. Young people do not necessarily respond to financial incentives/penalties.⁸

3. Multiple Punitive Welfare Conditionality Programs Can Compound Disadvantage and Create Confusion

I recommend that this Committee also consider the impact of the CDP program in conjunction with cashless welfare transfer cards such as the BasicsCard and the Cashless Debit Card. As observed by Martha Fineman, 'Privileges and disadvantages accumulate across systems and can combine to create effects that are more devastating or more beneficial than the weight of each separate part.'⁹ Government Committees and government commissioned researchers have examined each program separately, yet confusion can be created by the existence of multiple welfare conditionality schemes.

As indicated by Orima's research on the Cashless Debit Card, confusion has been caused by money disappearing from peoples' Indue Card accounts, and account holders were initially unsure whether this was due to CDC failure or whether it was because of CDP penalties.¹⁰ In such circumstances affected social security recipients may approach

⁵ Valerie Braithwaite, 'Closing the gap between regulation and the community' in Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (Canberra: Australian National University Press, 2017) p 28.

⁶ Valerie Braithwaite, 'Closing the gap between regulation and the community' in Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (Canberra: Australian National University Press, 2017) p 33-34.

⁷ Lisa Fowkes, 'Impact on Social Security Penalties of Increased Work for the Dole Requirements' (Canberra: Centre for Aboriginal Economic Policy Research Working Paper No. 112/2016, Australian National University, 2016) p 1-7.

⁸ Aboriginal Peak Organisations Northern Territory (APONT), *Developing Strong and Resilient Remote Communities: Proposal for Establishment of a Remote Development and Employment Scheme*, May 2017, p 29.

⁹ Martha Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law and Feminism* 1, p 15.

¹⁰ Department of Social Services (DSS), 'Cashless Debit Card Trial Evaluation: Wave 1 Interim Evaluation Report' (Orima Research, 2017) p 158.

numerous entities to try to get to the bottom of the dilemma as to where their missing income has gone: Centrelink, CDP Provider, Indue Ltd, the Department of Social Services, and the Department of Human Services. This is more labour they have to undertake in addition to the government's expectation that they spend time getting 'job ready'. This task of chasing where the money went is likely to be particularly difficult for those with limited literacy levels, carer responsibilities, and disability issues.

Appendix B together with some of my other publications¹¹ highlight that there are also significant problems with income management via the BasicsCard, and that the combination of income management with CDP is held in disdain by many Indigenous peoples because it involves working for 'rations'. This resonates with Australia's racist colonial legacy where economic resources were regularly withheld from Indigenous peoples who were portrayed by colonial authorities as too unworthy to access money and exercise financial decision making capacities. This occurred through stolen wages, stolen social security payments, and underpayment of Indigenous labour. Welfare conditionality programs that echo a similar dynamic of disempowerment can create trauma, grief, and frustration. Yet there are other sound policy options available. As Jon Altman and Elise Klein maintain:

basic income support could be provided to the 37,000 adults in regional and remote Australia who are currently trapped in restrictive and impoverishing work-for-the-dole schemes. These people should be empowered to have choice in solving their own labour surplus and livelihood challenges on a voluntary opt-in basis.¹²

4. CDP Consultation

My final point, I urge the Committee to reflect on policy process and ensure that consultation meets Australia's international human rights obligations towards Indigenous peoples. I have outlined such obligations re consultation in my publications.¹³ I note that the *Social Security Legislation Amendment (Community Development Program) Bill 2015* was drafted long before the 2016 CDP Consultation Paper was released. Only then did consultation occur. This process does not meet the requirements for meaningful consultation with Indigenous peoples and fell well short of obtaining their consent to the program.

The order in which the government proceeded in the design and implementation of CDP has shown contempt rather than respect for Indigenous peoples. This must change if

¹¹ Shelley Bielefeld, 'Income Management and Indigenous Women – A New Chapter of Patriarchal Colonial Governance?' (2016) 39(2) *University of New South Wales Law Journal* 843-878; Shelley Bielefeld, 'The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny' in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds), *'And there'll be NO dancing'. Perspectives on Policies Impacting Indigenous Australia since 2007* (Newcastle upon Tyne, Cambridge Scholars Publishing, 2017) p 153-157.

¹² Jon Altman and Elise Klein, 'Lessons from a Basic Income Programme for Indigenous Australians' (2017) *Oxford Development Studies* DOI: 10.1080/13600818.2017.1329413 p 11.

¹³ Shelley Bielefeld, 'The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny' in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds), *'And there'll be NO dancing'. Perspectives on Policies Impacting Indigenous Australia since 2007* (Newcastle upon Tyne, Cambridge Scholars Publishing, 2017) p 150-151; Shelley Bielefeld, 'History Wars and Stronger Futures Laws: A Stronger Future or Perpetuating Past Paternalism?' (2014) 39(1) *Alternative Law Journal* p 16-17.

constructive solutions are to be found to market failure in areas where the CDP program operates.

Government 'consultation' with Indigenous peoples often functions as a mechanism to inform them about predetermined policies, with no opportunity for genuine co-design of policy.¹⁴ This is a far cry from 'partnership'.

If I can be of any further assistance I would be happy to oblige.

Yours sincerely,

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Appendices

Appendix A

Shelley Bielefeld, Submission to the Department of the Prime Minister and Cabinet, *Consultation Paper: Changes to the Community Development Programme*, 15 April 2016, 1-3.

Appendix B

Shelley Bielefeld, Submission No 19 to the Senate Finance and Public Administration Committee, *Social Security Legislation Amendment (Community Development Program) Bill 2015*, 5 February 2016, 1-18.

¹⁴ Shelley Bielefeld, 'The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny' in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds), *'And there'll be NO dancing'. Perspectives on Policies Impacting Indigenous Australia since 2007* (Newcastle upon Tyne, Cambridge Scholars Publishing, 2017) p 151.