

Aboriginal Peak Organisations Northern Territory (APO NT)

**An alliance of the Central and Northern Land Councils and
Aboriginal Medical Services Alliance Northern Territory**

**APO NT Submission to the Senate Community Affairs
Committee Social Security Legislation Amendment
(Community Development Program) Bill 2018 (the
CDP Bill)**

20 September 2018

Introductory remarks and concern over lack of consultation

Since 2010 APO NT has demonstrated an active interest in the development and improvement of employment schemes for remote Australians. It has worked with other Indigenous organisations both in the NT and nationally to put forward proposals that will foster Indigenous decision making and community wellbeing. Most recently, APO NT has been working with a broad alliance of around 30 Indigenous organisations and peak bodies to raise concerns about the CDP and to develop a detailed alternative scheme. We have repeatedly requested negotiations over the CDP reform process in order to ensure that affected communities are included in decisions that have such an important impact on their lives. Some of the relevant correspondence is attached (see Attachment B)

Despite this we find ourselves, once again, responding to a Bill and a set of reforms that have not been the subject of prior consultation. Again, there is very little detail about key aspects of the overall reform package and it is proposed that much be left to delegated legislation. Again, we have very little time to respond to the submission deadline.

The Government repeatedly says that it wishes to do things with, not to First Nations people. Yet the story of the CDP has been one of top down decision making – from the decision to impose daily Work for the Dole on participants, to the failed 2015 CDP2 Bill, to this current proposal.

No measure that affects First Nations people to the extent that this Bill does should come before Parliament without first having been negotiated with affected First Nations people and their organisations. No Bill of this type should be adopted until and unless the Government provides evidence that it has consulted fully and openly with affected communities and they have given their free, prior and informed consent. As an alliance of peak Indigenous organisations in the NT, and as part of a wider alliance of Indigenous organisations, we are telling you that we have not been asked for our view in relation to this proposal and we do not consent to its passage.

Recommendation 1: APO NT does not support passage of the Bill and asks that the Senate reject the Bill.

The application of the Targeted Compliance Framework to CDP participants.

Since the start of CDP on 1 July 2015, the number of social security penalties applied to remote unemployed people has increased sevenfold – from an average of 5,900 per quarter to an average of 45,266 per quarter¹. By comparison, penalties applied to jobactive participants have averaged 37,481 per quarter even though that scheme includes twenty times as many people. These differences arose, not from social security rules, but from the way that the Government structured the CDP program itself.

CDP participants have more onerous obligations than participants in jobactive. This is the primary reason that their penalties are higher. Table 1 shows this comparison. This discrimination is not

¹ From published Department of Jobs and Small Business jobseeker compliance data. Covers period to end December 2017 (latest available).

addressed by the proposed Bill or the ‘reforms’ announced in the 2018 Budget. But the effect of the CDP Bill will be to increase the severity of penalties applied and eliminate the ability of those affected to re-engage and re-start their payments.

Table 1 Comparing obligations of jobactive and CDP participants

Mutual obligation requirements compared		
	jobactive	Community Development Program
Duration of requirement	Annual Activity Requirement starts at 12 months after starting in the program and lasts for six continuous months. Then continues for six months in each year of unemployment.	Work for the Dole starts immediately for those with mandatory obligation and lasts indefinitely. Providers can give participants up to six weeks ‘time off’ in any 12-month period. (i.e. minimum requirement of 46 weeks per annum)
Hours of work required. (people with full time work capacity)	Aged from 18-54: 50 hours per fortnight for 26 weeks each year = 650 hours per year Aged 55+: 30 hours per fortnight for 26 weeks each year = <u>390 hours</u> per year Plus job search and appointments.	Current: Aged from 18–49 inclusive: 25 hours per week in Work for the Dole activities. (at least <u>1150 hours per year</u>) Aged 50–54: 25 hours per week mutual obligation activities (at least <u>1150 per year</u>) From February 2019 this moves to 20 hours per week (at least 920 hours per year) Aged 55+: 30 hours per fortnight mutual obligation activities (at least <u>690 hours per year</u>) Plus job search and appointments.
Scheduling	Flexible	Activities must be scheduled across a five day, Monday to Friday week, unless PM&C gives permission for a special arrangement

The TCF is designed to increase the level of punishment of those who have multiple compliance ‘failures’. Because CDP participants, unlike any other group of income support recipients, have daily obligations from their first entry into income support, they accumulate more ‘failures’ more quickly.

From when the CDP started to December 2017, CDP participants received 80% of all ‘persistent non-compliance’ penalties even though they represented fewer than 5% of all job seekers. These are the penalties that are currently applied for multiple ‘failures’ and a good indicator of the likely impact on CDP participants of the new TCF. The Comprehensive Compliance Assessment (CCA) process (the equivalent of the new ‘capability assessment’ under the TCF) already existed throughout this period. But it did not prevent this extraordinarily disproportionate application of penalties to CDP participants. CCAs failed to uncover evidence of Indigenous individuals’ challenges in meeting obligations despite widespread recognition that remote Indigenous people face more than their share of health, disability, overcrowding and other obstacles to compliance with program rules. We are aware that the Government is trying to improve the current assessment processes (although they have not chosen to consult with APO NT about their ideas) but the effectiveness of these ideas has not been proven.

In this regard, it is noted that the explanatory memorandum states that there will be provision for local health workers to provide evidence to the Department of Human Services in relation to decisions about reducing a participant’s mutual obligation hours. Health services, particularly in remote communities, 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 and other developmental impairment assessments. 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. This will require engagement with Aboriginal health services and other relevant local organisations and an evaluation of any proposed changes to ensure that they do not fail vulnerable people as the CCA has done. The stakes are too high to rely on untested ideas to prevent penalties applying to vulnerable people.

Across the areas in which the members of APO NT operate we have heard, and continue to hear, stories of hardship, of people going hungry and of rising family stress. The application of penalties at an unprecedented rate is having a devastating impact. But the harm caused by 8 week penalties has been mitigated by the ability of participants to have their payment re-start if they go back to Work for the Dole. The TCF will remove this ability so that those who receive penalties will have the whole amount of any penalties (1,2 or 4 weeks) applied. People who were unable to call their provider because they had to travel to support a family member, or to a funeral, or because of illness, will have no practical way of having their income restored. In communities and families already under stress, this will make things much worse.

According to the Government's own figures, in the first year of the TCF's application to CDP participants it expects that there will be 4,687 income support cancellations. In year two this would rise to 7,941. That is one quarter of the current caseload. And while it maybe relatively easy for people in urban centres to go online or visit their Centrelink offices to re-apply for payments, it is much harder for people in remote communities. In fact across remote communities there are many people who do not currently have any form of income or income support. This has increased since the CDP started, as evidenced by the dramatic decline in its caseload. These people must rely on family to survive. The impact of cancellation of benefits on the scale expected under the TCF will make poverty much worse.

Recommendation 2: APO NT strongly opposes the application of the Targeted Compliance Framework to CDP participants and asks the Senate to reject this Bill.

In addition, the Government should immediately amend the CDP program to:

- Reduce annual activity obligations applied to CDP participants so that, on an annual basis, they are no more onerous than those imposed on other job seekers;***
- Provide participants and providers with flexibility to schedule activities in the way that best suits participants and their communities;***
- Give providers flexibility to identify the best approach to engaging local people in the program by removing any financial or performance incentives to recommend penalties.***
- Address the inadequacy of current assessment processes by working with Aboriginal organisations with expertise in this area on a mechanism that supports locally-based***

***assessments with more appropriate evidence requirements,
and closely evaluating results.***

Proposal for subsidised employment and the CDP Bill

Proposed harsher treatment of those in part-time work and who remain unemployed

The CDP Bill would allow the Government to establish ‘subsidised employment’. The Government already has wage subsidy schemes in place which do not have a legislative basis – for example under jobactive and the Indigenous Advancement Strategy. It appears that the main intent of these relevant provisions of the Bill is to exempt CDP participants who take up subsidised employment from harsh TCF requirements. CDP participants who take *unsubsidised* employment – for example in part-time or casual work – do not appear to be exempted in this way. This appears unfair and counterproductive. It is also unclear why those who are likely to be less employable (ie those who are *not* able to get new subsidised jobs and must stay in Work for the Dole) should be subjected to harsher penalty arrangements.

The imposition of harsher rules on those in unsubsidised jobs or who remain unemployed, compared to those in subsidised jobs cannot be justified. If, as is implied, the TCF would interfere with the ability of participants to sustain employment then it should not be applied at all.

Use of delegated legislation

The Explanatory Memorandum describes the Government’s current ideas about what subsidised employment might involve. However, as the Senate Standing Committee on Scrutiny of Bills has noted², the Bill has no detail about what this new type of arrangement involves, instead allowing this issue to be determined by the Government through a legislative instrument. We share that Committee’s view that issues like this that have a substantial impact on social security rights should be dealt with in primary legislation. We note, also, that the Government’s poor track record in consulting with or listening to affected communities over this program gives us no reason to think that the power that would be given to the Government to make delegated legislation would be used wisely or in ways that reflect community wishes.

Recommendation3: ***APO NT opposes the use of delegated legislation in matters that affect social security rights, particularly if there is no legislative requirement to take the views of affected people into account.***

The Government’s proposed subsidised employment scheme

APO NT understands that the Government’s proposed scheme has the following features:

² Scrutiny Digest 10 of 2018 at p.6.

- A wage subsidy of approximately \$21,034 over two years to support employers to create new jobs, with a retention bonus if the same employee stays in the job;
- A rolling total of 6,000 subsidised places;
- Subsidy to be available to all employers, excluding State and Commonwealth entities, but including non-Indigenous and private companies;
- Employers will be responsible for covering the gap between the subsidy and overall full-time employment cost (at least \$70,000 over 2 years with on-costs);
- Jobs are to be available to all people on CDP, regardless of unemployment duration.

The Government has stated that it is involved in detailed consultations with communities over this proposal. We are not aware of any consultations aside from those with providers and have not seen any schedule or plan for ongoing discussion. We have had one half hour briefing (at our request) at which limited detail, and no written material, was available. It is unclear what engagement the Government has had with potential employers, particularly those based in remote regions or what evidence the Government has drawn on to argue that the proposal will be effective.

APO NT has the following concerns about the proposal as it currently appears:

- There is a substantial gap between the employment subsidy and the total cost of employment for a full-time worker. This will make the scheme out of reach for most Indigenous organisations that are based in remote areas. The scheme is much more likely to be taken up by larger, private organisations based in larger centres that already have stronger labour markets.
- There is a significant risk that the 6,000 places will not be taken up.
- Those employed under the scheme are likely to be the most employable, many of whom are already able to secure casual/seasonal work when it comes up. It is not clear that wage subsidies will make a significant difference to the employment prospects of this group.
- In many communities there is a strong preference for part-time work, particularly if the total number of jobs available in the community is very limited.
- The scheme is not flexible or generous enough to empower communities to pursue their own projects and objectives. It could not be used, for example, to develop initiatives like the night patrol or ranger programs that emerged from the CDEP.

APO NT's view of the scheme currently proposed by the Government is that it will be out of reach for most remote community groups and, instead, be accessed by private employers based elsewhere. Unlike the CDEP, this scheme would not give remote communities access to resources to strengthen their cultural, social and economic lives, but, instead, increase the transfer of skills and resources from local Indigenous organisations to non-Indigenous NGOs and corporates. While the Government has not given figures for the cost of the scheme it appears to be poorly targeted. It does not appear to have been designed with remote Indigenous communities in mind.

Recommendation 4:

On the basis of the information provided to date, APO NT believes that the proposed subsidised employment scheme would be a poor use of limited funds available to support Indigenous economic, cultural and social development. It is likely to increase the proportion of IAS funding going to non-Indigenous organisations and to organisations based outside remote areas.

APO NT recommends that the Government not proceed with the scheme, but instead works with Indigenous organisations including APO NT to identify more appropriate ways of investing funds and to develop a community consultation process to ensure that any future proposals meet community needs.

APO NT survey of remote employers on behalf of the Fair Work and Strong Communities Alliance

In response to the tabling of the CDP Bill, APO NT conducted a brief survey to gather evidence from employers in remote areas about what type of assistance, including what type of subsidy scheme, might assist them to create more jobs for remote Indigenous residents.

The survey was distributed through our networks and run over ten days from 7th to the 17th September. While the survey was done quickly, it provides some insights into what assistance remote employers – particularly Indigenous organisations – might need to increase local employment.

We received 67 responses from employers across a range of sectors. They ranged in size, with sixty per cent employing fewer than 50 people, and 16% employing 200 or more. 68% of respondents were Indigenous non-profit organisations.

Employers were presented with three wage subsidy options and asked, in relation to each, how likely it was that, if the particular subsidy was available, they would create new jobs in their organisation. They were then asked how many they would be likely to create.

The following table shows the results:

Option	Likelihood of creating jobs	Number of jobs likely to be created (by those employers stating they are likely to create jobs)
A. Wage subsidy of \$10,000 for jobs of at least 20 hours per week, paid over six months. (jobactive wage subsidy model*)	Very likely 34.33% Likely 26.87% TOTAL= 61.2%	184
B. Wage subsidy of \$21,034 over two years for full time job. (CDP subsidised job proposal*)	Very likely 14.93% Likely 28.36% TOTAL = 43.29%	98
C. Wages and on-costs for jobs of 20 hours per week.	Very likely 56.72% Likely 31.34%	467

Should offer skills development. (Fair Work & Strong Communities proposal*)	TOTAL = 88.06%	
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* Note that the source of each option (eg. jobactive, CDP reforms) was not identified in the survey. Responses were only included where the employer had assessed all three options.

Of the three options put forward the option with the strongest impact was Option C, the one proposed by the Fair Work and Strong Communities Alliance (described further below). The option currently proposed by the Government (Option B) was the least likely to generate new jobs, even though it appears to be more expensive than Option A – which is based on the wage subsidies currently being offered in non-remote areas for the employment of Indigenous people.

A more detailed summary of the survey findings will be provided as a supplementary submission.

Recommendation 5: ***While we welcome investment in job creation, APO NT believes that the proposed scheme is poorly designed and targeted and will tend to support communities, organisations and job seekers that least need the assistance.***

In addition, in contrast to the CDEP, this investment will not improve the ability of local communities, through their organisations, to lead their own social, cultural and economic development.

APO NT recommends that the Government work with Indigenous community organisations, CDP providers and employers to develop a more effective scheme that will both generate employment impact and strengthen local Indigenous community organisations. We propose the Fair Work and Strong Communities scheme as the appropriate basis for this discussion.

The Fair Work and Strong Communities alternative scheme

In September 2017 an alliance of over 30 organisations including APO NT, National Congress of First Nations People, ACOSS, Human Rights Law Centre, Jobs Australia and many CDP providers presented an alternative employment program proposal to the Senate Committee that was then conducting an Inquiry into the CDP.

A detailed comparison table is attached which shows the differences and commonalities between our proposal – the Fair Work and Strong Communities: Remote Development and Employment Scheme, the current CDP and what we know of the Government’s latest ideas (see **Attachment A**).

The key elements of our proposed scheme are as follows

A Creating immediate paid work

- Funding packages for the creation of new **10,500 jobs**. Packages cover 20 hours at minimum wage plus on-costs, which may be topped up to full time or to a higher wage rate, by an employer.
- Jobs must be created in local Indigenous community based organisations or local government, keeping funds in the community. These organisations must identify projects and/or services that they will deliver through the funding.
- Allocation of funding packages is based on labour market strength, with more packages assigned to places with fewer unsubsidised job opportunities.
- **1,500 paid, six-month work experience places** for young people, particularly targeting those transitioning from school to work.
- Repurposing the existing \$25m entrepreneurship fund to support social enterprise development.

B Indigenous control

- Indigenous control is embedded at the national, regional and local level. The program is managed by a national, Indigenous led body that collects and disseminates evidence of what is working, or not.
- Within broad program goals (like increased employment rates) local communities have significant input into local targets and scope to vary 'default' policies in relation to level of obligations and penalties.

C Focus on long term positive impacts

- Program orientation changes from short-term results to achieving net impact through, over time, the creation of sustainable new jobs and skilling local people to take up jobs already in communities.
- Financial incentives to penalise participants are removed.
- People with substantial long-term health issues and/or disabilities are assigned to a stream in which they are supported to participate voluntarily, but not compelled.

The Fair Work and Strong Communities scheme would replace the current, top down scheme with one that is able to be harnessed by local Indigenous communities to pursue their objectives. Instead of Canberra deciding what the performance measures should be, local communities would be involved in setting priorities and adapting the program to their needs.

Instead of chasing short term work, the scheme would focus on long term net impact, including helping people move into better, more skilled, jobs. It would provide opportunities for young people to get a job straight after school. It would, by the establishment of 12,000 paid jobs in Indigenous led organisations, make a substantial difference to the health, incomes and wellbeing of communities and give Indigenous communities the chance to implement strategies in their own communities.

Rather than having a program which is run by a series of surprise announcements, our proposal is for the program to be run by an Indigenous led body, that operates transparently and on the basis of evidence of what works.

The Final Report of the Senate Finance and Public Administration Committee Inquiry into the appropriateness and effectiveness, of the objectives, design, implementation and evaluation of the CDP noted the widespread support for this model. Recommendation 20 of that report said that:

The Committee recommends that the Australian Government formally cost the Aboriginal Peak Organisations of the Northern Territory submission. This costing should include a comparison of the complete costs of the previous Community Development Employment Projects (CDEP) and the current CDP, including costs such as the portion of the Department of Social Services budget (including outsourced funding arrangements) spent on administering the CDP.

Unfortunately, while the Government agreed to cost the proposal and to consider the model closely, if they did this it all, it was without reference to APO NT or the broader alliance. The resulting 'reforms' do not address the problems with the CDP scheme.

Recommendation 6: ***We urge the Committee to reject the current Bill and the wider 'reforms' of which it is part. We ask the Committee to consider how, through its processes, the Government can be held to account for its repeated failure to listen to the voices of First Nations people in its development and implementation of the CDP scheme.***

