



Submission on the Social Security Legislation Amendment (Community Development Program) Bill 2018

21 September 2018

About NAAJA

1. The North Australian Aboriginal Justice Agency (**NAAJA**) provides high quality, culturally appropriate legal aid services for Aboriginal people across the Northern Territory. NAAJA provides legal advice, casework and representation in areas of criminal and civil law, including child protection, and delivers prison support, throughcare services and community legal education. NAAJA also advocates for policy changes and law reform in areas impacting on the rights of Aboriginal people.
2. NAAJA provides tailored legal and justice services for remote communities, and travels regularly to remote communities to provide advice, casework, representation and deliver community legal education.
3. NAAJA regularly engages directly with Community Development Program (**CDP**) participants and many of NAAJA's clients in remote communities are CDP participants.
4. NAAJA's casework and litigation in respect of CDP and related issues focuses on:
 - a. Challenging penalties, suspensions and/or cancellations of clients' payments by seeking internal review by the Department of Human Services and lodging appeals in the Administrative Appeals Tribunal;
 - b. Making complaints to the Commonwealth Ombudsman;
 - c. Assisting CDP participants to seek exemptions from inappropriate mutual obligation requirements;
 - d. Assisting CDP participants to make DSP applications.
 - e. Assisting people to re-engage with the Department of Human Services in circumstances where their payment has been cancelled.
5. Because of gaps in communication and service provision in remote communities, NAAJA is also often requested to provide assistance with seeking supporting documentation, clarifying a participant's requirements and making information requests.
6. In June 2017, NAAJA made a submission to the Senate Finance and Public Administration References Committee on the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the CDP (**NAAJA Submission 2017 - attached**).¹ That submission and NAAJA's views of CDP more broadly, are informed by:
 - a. Consultations with men's and women's groups in several remote communities, held in the course of dealing with client's matters and in the context of delivering legal education related to CDP and welfare matters;

¹ NAAJA, *Submission 40 to the Senate Finance and Public Administration References Committee - Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Programme (CDP)*, June 2017 at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Submissions

- b. Feedback received from people working in the CDP system who are familiar with the CDP arrangements and previous practices;
- c. Case studies of clients who engaged NAAJA's civil lawyers;
- d. Online news reports; and
- e. The Aboriginal Peak Organisations Northern Territory, "Developing Strong and Resilient Remote Communities: Proposal for Establishment of a Remote Development and Employment Scheme" (May 2017) (**APO NT Model**).

The remote and policy context of CDP

7. To appreciate the impact that the *Social Security Legislation Amendment (Community Development Program) Bill 2018* (the **Bill**) is likely to have on the people it targets, it is vital to understand the context in which operates, as well as the current impacts of CDP's compliance regime.

CDP in remote NT communities

8. CDP is applicable to people living in remote Australia who receive unemployment social security payments. It is well established that CDP has a significant impact on Aboriginal and Torres Strait Islander people living in the NT. Materials published by the Department of Prime Minister and Cabinet report that as at June 2018:
 - a. CDP is delivered in 60 regions across Australia, and 23 of those CDP Regions are located in the NT;
 - b. More than 80% of the 32,000 people participating in CDP are Aboriginal and Torres Strait Islander people.²
9. As well being subject to approximately twice the number of participation hours (as set out below), NAAJA has received reports from many people in remote communities about barriers to participation and engagement with CDP. These are detailed in the NAAJA Submission 2017, and include:
 - a. **Communication difficulties when dealing with Centrelink:** Clients report difficulties in communicating with Centrelink, such as Centrelink or provider staff talking to them in ways they did not understand; and not using interpreters when required.³
 - b. **Medical problems:** Some participants have medical problems (such as injuries and chronic conditions) and disabilities which are not properly taken into account in decisions about their CDP participation.⁴

² Department of Prime Minister and Cabinet, *The Community Development Program Regions*, 2018, 1-3, at https://www.pmc.gov.au/sites/default/files/publications/cdp-regions_25-June-18.pdf

³ NAAJA, above n 1; Case studies B, G, I, J, K; at 8, 15, 16-21.

⁴ *Ibid*; Case studies B, D, H, I; at 8, 12, 16.

- c. **Carer obligations and cultural obligations:** Some participants reported that carer obligations and cultural obligations were not properly considered or respected in the course of decisions about their CDP participation.⁵
 - d. **Access to Centrelink:** For many of our clients, there is no effective way to contact Centrelink. There is no Centrelink agent in community and wait-times on the phone are lengthy, at times up to 4 hours. NAAJA hears reports of clients spending 8-9 hours on the phone to resolve a payment issue.⁶
10. There is also widespread confusion about the existing CDP system, particularly as to the payments and penalty components.⁷ The frequency of changes to the remote work for the dole policy and legislative framework,⁸ as well as the lack of effective communication about participants' rights and obligations, are major contributors to this confusion.
11. Further, and as stated in NAAJA's 2017 submission, concerns were expressed in many consultations that CDP required participants to spend a significant amount of time attending "activities" but did not provide a fair wage.⁹ A 2018 report published by the Australia Institute found that CDP participants on the full activity requirement would typically be required to work for \$11.20 per hour, before any penalties that might be incurred; compared to the minimum wage of \$18.29 per hour.¹⁰ It is unsurprising that CDP is considered as unfair in these circumstances, especially viewed together with the punitive penalty framework and discriminatory application that disproportionately impacts Aboriginal people.
12. The sense that CDP is unfair and will ultimately not assist participants to gain employment among participants and community members is leading to disengagement and refusal to participate, even if this means living without income. This is particularly a problem amongst young people. A lack of appropriate activities, or participants having to do activities that do not provide skills capable of assisting them to find ongoing and meaningful work, has led to a sense that participation is a 'waste of time'.¹¹ This is particularly the case where our clients report that the women's CDP activities in certain communities include making sandwiches, or circumstances where a CDP participant's activity was to provide garden maintenance to community members, which is something that he was previously employed for in a different community. These kinds of participation activities do little, if anything, to assist participants to gain regular employment.

⁵ Ibid; Case studies A, C, E, J; at 7, 10, 12, 18.

⁶ Ibid; Case studies B, F, G, I, J; at 8, 14 - 18.

⁷ Ibid, 25; Senate Finance and Public Administration References Committee, Parliament of Australia, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Programme (CDP)*, (2017), 14-15.

⁸ Senate Finance and Public Administration References Committee, above n 7, 8-15.

⁹ NAAJA, above n 1, 39.

¹⁰ Rod Campbell, Bill Browne, Matt Grudnoff, *Remote Control: The Community Development Program, Remote Australia's Work for the Dole Scheme* (2018), The Australia Institute, 3.

¹¹ NAAJA, above n 1, 39.

13. NAAJA also considers that homelessness in remote communities, including due to overcrowding, is a significant factor impacting upon participation and engagement with CDP.¹² According to the 2016 Census, the Northern Territory has a homelessness rate approximately 1,204% higher than the national average of homelessness. Approximately 77% of homeless persons in the Northern Territory are in remote areas. When remote homelessness is considered exclusively, the rate of homelessness in remote areas in the Northern Territory is approximately 3,953% above the national average. Severe overcrowding in remote communities in the NT negatively impacts on health, safety and participation in education and employment.¹³

CDP is entrenching poverty

14. The low rate of Centrelink payments can make it difficult for all Australians receiving payments to achieve and maintain a basic standard of living.¹⁴ Further, recent research confirms that Centrelink payment rates have not increased commensurate with the increasing costs of living in the Northern Territory.¹⁵ In addition to this, the cost of living in remote areas in the Northern Territory is much higher than in urban areas.¹⁶ People living in remote indigenous communities often need to travel long distances to access essential services, adding to living costs, and making attendance at CDP activities potentially difficult.¹⁷ This can be extremely expensive for people who live in communities where the roads in and out of the community are flooded in the wet season.

15. NAAJA holds grave concerns that if the CDP and compliance framework is not amended in a way that properly accounts for the unique circumstances that exist in the areas to which CDP applies, vulnerable members of remote Indigenous communities will continue to be exposed to further financial hardship, entrenching and furthering cycles of poverty.

NAAJA's position on the Bill

16. The key purpose of the Bill is to bring CDP participants under the Targeted Compliance Framework (**TCF**). The TCF is the compliance regime that has been applicable to non-remote jobseekers since 1 July 2018. The explanatory memorandum to the Bill provides that 6,000 subsidised positions will be introduced for people subject to CDP.¹⁸ The Bill includes provisions that those people who are undertaking subsidised employment are to be exempt from activity requirements and from entering into an employment pathway plan.

¹² Reports from service providers confirm this view. Ibid, 24.

¹³ NAAJA, *Northern Territory Housing Issues Paper and Response to the Housing Strategy Consultation Draft* (2016), 11.

¹⁴ F Markum and N Biddle, 'Income, Poverty and Inequality – Census Paper' (2016), Centre for Aboriginal and Policy Research, 11.

¹⁵ Northern Territory Council of Social Services, *Cost of Living Report*, Issue 20 – Part 1 (2018), 6-12.

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¹⁷ Senate Finance and Public Administration References Committee, above n 7, 26.

¹⁸ Explanatory Memorandum, *Social Services Legislation Amendment (Community Development Program) Bill 2018*, 4.

17. NAAJA is gravely concerned about the impact that the TCF will have on people subject to CDP and strongly **opposes** the Bill's introduction of the TCF to CDP participants.
18. NAAJA welcomes the government's announcement to introduce 6,000 subsidised jobs, but it is our position that the government must adopt the framework of the APO NT Model to ensure the benefit of the proposal is maximized and that the subsidised positions are more appropriately targeted.
19. NAAJA supports that people in subsidised positions are to be exempt from the TCF, should the Bill be passed, but also call on the government to amend these provisions to ensure that people in non-subsidised employment also reap their benefit.
20. Further, no matter the compliance framework in place, NAAJA seeks that the government exempt people that are in either subsidised or non-subsidised employment from the compliance regime.
21. To summarise, NAAJA's submission:
 - a. Outlines that the Bill and proposed amendments will not address NAAJA's key concerns regarding the current operation of the CDP and compliance framework. In fact, we consider that the TCF will ultimately exacerbate the issues.
 - b. Outlines the specific concerns NAAJA has with the TCF, including that it is harsh, punitive and fails to uphold current safeguards.
 - c. Outlines the need for the Government to adopt the APO NT Model to maximize the benefit of the 6,000 subsidised positions.

NAAJA's key concerns are not addressed by the Bill

22. Fundamentally, the changes proposed by the Bill do not address NAAJA's key concerns as outlined in the NAAJA Submission 2017.¹⁹
23. Further, the penalty as part of a compliance framework in CDP is fundamentally flawed as the reason why a person should undertake work for the dole or CDP activities is to put them in a better place in order to obtain employment. The rationale for penalties is to therefore incentivise a person to go to their activities in order to achieve the goal of that person being able to successfully apply for a job.
24. In the Northern Territory's remote communities, there is chronic unemployment and currently no large scale strategy to develop new industries or growth in employment. Penalties in this context are unable to lead to a person successfully applying for a job (because in short, there are few). Penalties are therefore purely putative and its only effect

¹⁹ NAAJA, above n 1, 6-7.

is to further enshrine poverty. Implementing the TCF in remote communities would only exacerbate this problem.

25. While the 6,000 subsidised employment positions would offset this problem, these positions would only go to a few of the approximately 35,000 CDP participants.²⁰
26. As the TCF provides stricter penalties than under the current compliance framework, we hold grave concerns that the TCF will ultimately exacerbate the harms experienced by those subject to CDP.

Discriminatory nature of mutual obligation requirements

27. It is of urgent concern to NAAJA that more onerous mutual obligation requirements continue to be imposed on CDP participants, compared to Jobactive (the program applicable to non-remote jobseekers) participants.
28. From 20 September 2018, participants in Jobactive aged 18-49 with full-time mutual obligation requirements will generally be required to complete 50 hours work for the dole activity per fortnight over 26 weeks.
29. By contrast, CDP participants aged between 18-49 years with full capacity are currently required to complete up to 25 hours work for the dole activity per week (if assessed at full capacity), five days per week, all year round. We note the Government's proposal to reduce participation from up to 25 hours to up to 20 hours per week, from February 2019. Even with this change, the requirements for CDP participants will still be more onerous compared with Jobactive participants.
30. The imposition of higher activity requirements in remote communities where the overwhelming majority of participants are Aboriginal and Torres Strait Islander people is discriminatory.
31. The imposition of more onerous requirements on remote participants is also punitive in view of the barriers to participation and effective access to exemptions faced by many CDP participants, and the harsh penalties that follow for "non-compliance".
32. As a result, remote jobseekers simultaneously face more onerous requirements and more barriers to compliance than non-remote jobseekers, and are therefore at far greater risk of receiving non-compliance penalties.
33. This is reflected in the evidence of disproportionately high numbers of non-compliance reports being generated in CDP compared with Jobactive, the large number of penalties

²⁰ This figure is based on the APO NT Model where it is noted that 10,500 persons is approximately 30% of the CDP caseload. See Aboriginal Peak Organisations Northern Territory, *Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme*, (2017), 14.

issued to CDP participants, and the high proportion of these penalties arising from “no show no pay”. For example:

- a. The ANAO found: “[B]ased on a snapshot of Participation Reports in January 2017 for both jobactive and the CDP, 54 per cent of all non-compliance reports across the two programs that triggered Human Services’ investigation and decision making process were CDP generated, despite the CDP comprising around 5 percent of the jobactive caseload.”²¹
- b. According to the Department of Prime Minister and Cabinet, in the December 2016 quarter there were 43,656 financial penalties applied in CDP regions and around 80% of these related to “No show no pay” penalties.²²

34. As set out in the NAAJA Submission 2017, the punitive focus of CDP results in severe financial hardship for NAAJA’s remote clients.²³

Inappropriate mutual obligation requirements

35. Since the CDP was introduced in July 2015, NAAJA has seen many clients who have significant physical, intellectual and/or psychological disabilities, and others who have substantial personal and family challenges and caring responsibilities being required to attend activities. We consistently see highly inappropriate mutual obligation requirements leading to penalties being imposed as well as the complete cancellation of payments.

36. For example, one client from a remote community was subject to the full 50 hour per fortnight participation requirement for a number of years. In that time the client suffered extensive penalties, with his Centrelink being completely cancelled at one point, leaving him without any income at all for a number of months. NAAJA assisted him with submitting an internal review request of all penalties, suspensions and cancellations he had suffered since the CDP was introduced. The Internal Review Officer found that he had not been medically fit for his activities and that all decisions to penalise, suspend or cancel his payments that caused him financial hardship should therefore have not have been made. NAAJA assisted the client with successfully seeking the Disability Support Pension, however, there is a real question as to whether he should have been subject to any mutual obligation requirements at all, and at the very least not the full requirements.

37. Another client from a remote community was struggling to comply with her mutual obligation requirements due to personal circumstances. She had had various penalties

²¹ Australian National Audit Office (ANAO), *The Design and Implementation of the Community Development Programme*, (2017), [3.29] at <https://www.anao.gov.au/work/performance-audit/design-and-implementation-community-development-programme#2-1-conclusion>

²² The Department of Prime Minister and Cabinet, *Submission 36 to the Senate Finance and Public Administration References Committee - Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Programme (CDP)*, June 2017, cited in Senate Finance and Public Administration References Committee, above n 7, 42.

²³ NAAJA, above n 1, 6-7, 37. See in particular Case studies G and K.

imposed and sought assistance from NAAJA. It was only when NAAJA helped her submit a complaint to the Commonwealth Ombudsman that Centrelink acknowledged she should not have been subject to those mutual obligation requirements, reimbursed her for some penalties suffered and significantly reduced her participation obligations.

38. Whilst the government has provided that the TCF “will ensure additional protections for all CDP participants”,²⁴ we hold grave concerns that the underlying causes of people subject to harsh and inappropriate obligations are not, and will not be, addressed.
39. It is clear to NAAJA that inappropriate mutual obligation requirements are being imposed as barriers to participation are not being adequately identified and addressed. The CDP Guidelines provide that a person’s mutual obligation requirements are determined by their age, assessed work capacity and their caring responsibilities.²⁵ A person’s assessed work capacity is determined by an Employment Services Assessment (ESAt) conducted by a DHS Assessor.²⁶ The CDP Guidelines which were in force until April 2018, provided that where there is no ESAt, the Job Seeker Classification Instrument (JSCI) is to assist identifying personal issues that may affect a person’s employability.²⁷ Despite these processes being in place, people are consistently subject to inappropriate obligations.
40. The government has provided that under the proposed new model, CDP participants will have less interaction with Centrelink,²⁸ that CDP providers will have a greater role to work with CDP participants and that the role of local health service providers will be increased to support participants.²⁹ However, sufficient clarity around what the Government proposes that this looks like is not clear. In particular, it is not clear whether resourcing for local CDP providers will be increased to enable them to provide additional supports or appropriate assessments.
41. We would support an increase in the engagement of health service providers, but note that the government needs to properly consider what supports are available in community to assist with addressing issues, and that health care providers need to be supported in doing this properly. To highlight this we reiterate the following case study from our 2017 submission: “Our client instructs that when he did attempt to discuss his concerns with the doctor in community, he was told that he was “fine to work, he just had to lose weight” and “not to be around smoke”. There was no consideration of what supports were available to our client within his community to assist him to lose weight, or any consideration of what activities may and may not be appropriate for him in light of his present physical limitations.”³⁰

²⁴ Explanatory Memorandum, above n 19, 3-4.

²⁵ Community Development Programme, *CDP Guidelines – Mutual Obligation Requirements*, Effective Date April 2018, 2.

²⁶ *Ibid*, 5; Community Development Programme, *Guidelines Handbook*, Effective Date 7 September 2015, 16.

²⁷ *Ibid*.

²⁸ Commonwealth, *Parliamentary Debates*, Senate, 23 August 2018, 30 - 31, (Senator Anne Ruston).

²⁹ Explanatory Memorandum, above n 19, 3-4.

³⁰ NAAJA, above n 1, 10.

42. Further, the current compliance framework provides that Comprehensive Compliance Assessments (CCAs) are to be conducted by DHS when people are failing to comply with their obligations.³¹ However, we refer to comments made in NAAJA's 2017 submission,³² and note that from our experience, CCAs are perfunctory.³³ The lack of understanding of people's circumstances in remote community by DHS staff, the limited use of interpreters, and reliance on phone communication are often factors which contribute to assessments not achieving what is intended, that is, if they take place at all. Whilst with the TCF, capability interviews are to be conducted by providers and capability assessments are to be conducted by DHS before people move in to the harsher phase, this is similar to the current process. It is unclear to NAAJA how the Capability Interviews and Assessments under the TCF will address the failings of the current assessment processes.

Complex and confusing system that does not account for language and cultural barriers

43. Our concerns about the TCF are compounded when viewed against the background of widespread confusion about the existing penalty system and lack of effective communication about rights and obligations to participants.

44. We are highly concerned that the TCF is yet another complex framework that won't be adequately understood by those subject to it. It is NAAJA's experience is that many participants do not have a proper understanding of the scheme, and how the penalty system works. This was highlighted by a recent experience with a client in a remote community. Despite being a long-term CDP participant, they did not understand that they would get penalised if they did not attend their activity. The CDP system had never been explained to them with an interpreter.

45. NAAJA also sees clients who do not understand when a penalty may be made and/or what their rights are in relation to those penalties. It is clear is that for any program to be effective it must have widespread understanding, particularly in the context of community-wide language barriers and incessantly changing obligations and government intervention.

46. More generally speaking, there are a range of cultural reasons why participants may be unable to comply with meeting requirements which our clients currently report Centrelink fails to understand. We have concerns about participants subjected to the TCF being penalised due to these cultural obligations. For example, our clients instruct that they experience:

³¹ Department of Social Services, *Social Security Guide - 3.1.13.70 - Comprehensive Compliance Assessments* at <http://guides.dss.gov.au/guide-social-security-law/3/1/13/70>, accessed 16 September 2018.

³² See NAAJA, above n 1, 33 – 35.

³³ *Ibid*, 7.

- a. Difficulties explaining to Centrelink obligations to attend funerals and miss activities in circumstances where they are culturally prohibited from saying the name of the deceased person, and funeral obligations may last for a week or longer;
- b. Inability for male CDP participants to speak about certain issues with female Centrelink staff members and a lack of cultural understanding about these difficulties; and
- c. Limited exemptions available for bush trips that participants may be culturally obliged to take to visit or care for family out bush.³⁴

47. There are also a number of logistical reasons why our clients fail to meet obligations which they are then unfairly penalised for, such as:

- a. Lack of access to mobile phones or landlines;³⁵
- b. Lengthy wait times on the phone to speak to a Centrelink staff member;³⁶
- c. Not being notified of their Employment Services Assessment Appointment (ESAt) due to the absence of reliable post or phone access;³⁷ and a
- d. Lack of use of interpreters.

Specific concerns with the Targeted Compliance Framework

48. Whilst the government has provided that “financial penalties will focus on those who are persistently and willfully non-compliant”,³⁸ we do not consider that this will be the reality in CDP regions.

Harsh and punitive framework

49. The TCF is ultimately a system of demerits and payment suspensions that will punish participants who are unable, or do not, comply with their CDP requirements. When in the first “phase”, providers issue demerit points and a suspension is imposed if participants are considered to have not complied with their requirements. Back-pay is provided to participants upon re-engagement. Individuals who accrue five demerit points within six months will be moved to the second ‘phase’, the ‘penalty zone’, following a capability assessment by DHS.

50. Once in the ‘penalty zone’, non-compliance results in penalties imposed by DHS. The first non-compliance results in a reduction of the participant’s weekly payment, the second non-compliance in a reduction of the participant’s fortnightly payment, and the third non-

³⁴ NAAJA, above n 1, 33.

³⁵ Ibid.

³⁶ Ibid.

³⁷ NAAJA, above n 1, 34.

³⁸ Explanatory Memorandum, above n 19, 3.

compliance in a complete cancellation of a person's payment, with a waiting period of 4 weeks before the participant can re-apply.

51. Given the highly burdensome mutual obligation requirements and NAAJA's key concerns which are not being addressed (as outlined above), NAAJA is highly concerned that remote clients are likely to end up in the penalty zone quicker than anticipated.
52. Further, these extremely harsh penalties cannot be waived on the basis of serious financial hardship.³⁹ The penalties cannot be lifted if a person engages in certain compliance activities (as is currently the case for people who have been issued 8 week suspensions). These factors are particularly concerning in light of the circumstances of poverty that exist in remote parts of the Northern Territory as outlined above.
53. Whilst it may be argued that demerit points do not carry financial consequences as the current no show no pay penalties do, only five are required before a person can find themselves in the penalty zone. Additionally, payments are immediately suspended until the participant re-engages, creating an initial period of financial hardship even if the participant is later back-paid. Given the disproportionate number of participation hours that apply to CDP participants and the barriers to compliance that many CDP participants face, NAAJA is concerned that CDP participants will quickly be subject to the extraordinarily harsh penalties in the 'penalty zone'.
54. These penalty provisions are extremely concerning as they financially penalise a group of people who are already in an extremely difficult financial position, thereby entrenching them into further poverty. The reduction or suspension of their payments increases the likelihood that the person will go into rental arrears (which impacts over members of that person's household) and further into debt if they have entered into short term loans, telephone contracts or any other consumer leases. The reduction, and especially suspension of payments are already having an incredibly intense impact on the broader community as extended family members (who are already in tight financial circumstances) are socially and culturally obliged to support that person. NAAJA is incredibly concerned that the TCF will more rapidly hasten a person's descent into poverty.

Requirement to re-apply for payment particularly prohibitive for remote clients

55. NAAJA has further concerns that under the TCF, participants are required to re-apply for payment. NAAJA clients have consistently expressed their frustration with difficulties connecting and negotiating with Centrelink. The requirement to re-apply for payment is likely to seriously disadvantage remote clients who face serious logistical barriers to connecting with service providers. Alarming, NAAJA has heard of a number of situations

³⁹ In determining whether a financial penalty ought to be imposed, the Secretary is not required to consider the financial hardship that might be caused (as in the current sections 42NC, 42Q of the *Social Security (Administration) Act 1999*).

where barriers are so great that people have abandoned income support altogether.

56. The Senate Committee heard about the serious logistical problems faced by people living remotely, including spending hours on the telephone waiting to connect with Centrelink staff. They heard that “participants living in remote parts of the Northern Territory are without a permanent Centrelink office for between ‘four to six or eight weeks [between] visiting times’. The lack of permanent facilities leads to difficulties for participants being able to contact and liaise with Centrelink.”⁴⁰ We also hold this view, and submit that when combined with language and cultural barriers, Aboriginal people living remotely will be negatively affected by any requirement to re-apply for payments after the completion of a preclusion period.

Failure to uphold current safeguards

57. Under the TCF, the Department of Human Services will have no oversight in regards to the issuing of demerit points. Only five demerit points need to be issued by a CDP provider before a person can find themselves in the ‘penalty zone’ and susceptible to harsh penalties.
58. Under the current framework, providers report jobseeker non-compliance to DHS (which triggers initial payment suspension and jobseeker contact). DHS then investigates non-compliance and determines whether the non-compliance apply and whether any penalties should apply.
59. We have clients where non-compliance was reported by the provider but DHS has exercised their discretion to not impose a penalty. We have had many clients issued with failures in circumstances where upon review, DHS found that they were incorrectly imposed, i.e. DHS found that they had reasonable excuses and that penalties should not have been imposed.
60. In light of the concerns outlined above, we are troubled by the prospect of DHS not having any oversight or discretion in regards to the issuing of demerit points.
61. We consider DHS having discretion in this space to be absolutely vital to provide an additional check and balance on something which could quickly lead to harsh and punitive consequences.

⁴⁰ Senate Finance and Public Administration References Committee, above n 7, 49.

Possible reliance on self-service and digital access

62. Logistical barriers are an ongoing problem for many of our remote clients who are CDP participants. We note our concerns regarding any scheme which may rely on self-service or digital access given the limited access many remote participants have to mobile phones, landlines and the internet.
63. The Senate Committee has heard from a range of organisation about the extensive telephone and internet issues that affect CDP participants.⁴¹ NAAJA's experience reflects these submissions.
64. It would be grossly unfair for participants to be penalised for a lack of digital access in their communities.

Subsidised employment

65. The NAAJA 2017 submission supported the APO NT Model. The APO NT Model was an alternative model to the CDP, as it existed at that point in time, and provided a wide ranging and multifaceted proposal where one component was a proposal for a subsidised employment program.
66. The proposed subsidised employment aspect of the Bill (the subsidised employment proposal), albeit structured in a different way, does have similar aspects to the APO NT Model.
67. The Bill, however, does not provide any detail about the way that the subsidised employment proposal is to be implemented. Currently, and unlike the APO NT Model, it does not appear that the subsidised employment proposal is targeted to ensuring:
 - a. That jobseekers are assisted in achieving long term, unsubsidised employment;
 - b. Poorer communities will be able to take advantage of subsidised employment positions; and
 - c. More vulnerable job seekers (such as youth or persons suffering from disabilities) are able to take advantage of subsidised employment positions and ultimately transition into unsubsidised employment.
68. The following submissions, therefore, note the positive aspects of the subsidised employment proposal while advocating that the government **must** adopt other aspects of the APO NT Model to ensure the benefit of the proposal is maximized and that the subsidised positions are more appropriately targeted. Please also note that while the submissions below refer to some key aspects of APO NT Model, we submit that it should be adopted entirely.

⁴¹ Ibid, 49.

Positive aspects of the subsidised employment proposal

69. As outlined above, there are a number of positive aspects of the subsidised employment proposal.
70. Firstly, the subsidised employment proposal seeks to provide 6,000 subsidised employment positions for a period of two years. These positions are a positive step in terms of reducing the level of unemployment in remote communities. The fact that they will be guaranteed for a period of two years ensures that job seekers will have a level of certainty with respect to their income which will enhance those job seeker's abilities to make longer term financial decisions. Job seekers will also benefit from the positive contributions meaningful employment provides to their mental and physical health.⁴²
71. Secondly, the subsidised employment proposal provides that the subsidised positions will attract real wages (minimum of above award a wages) as well as superannuation contributions and all the other benefits of any unsubsidised form of employment. This is a particularly positive step as the job seeker may seek death benefit and total permanent disability insurance through their superannuation contributions and it ensures the job seekers receive the benefits of any other employee which is an additional benefit that was not part of the CDP's predecessor programs (i.e. the CDEP or the RJCP).
72. Thirdly, as the subsidised employment proposal does not make it mandatory for a job seeker to take any subsidised employment position, this allows the job seeker a choice. We submit that this will hopefully boost the "buy-in" of the job seeker for their position when they do choose to take such a position, and will hopefully ensure greater production outcomes for the employer and greater long term employment prospects.⁴³
73. Fourthly, and unlike the current CDP, a job seeker whose subsidised employment comes to an end through either their resignation or "misconduct" is not subject to any penalty provisions. As suggested by the explanatory memorandum to the Bill, this is a welcomed, flexible mechanism that is necessary in order to take into account the reasons why a job seeker in a remote community might need to leave their employment, such as to avoid domestic violence, etc.

Aspects of the APO NT Model that should be adopted by the Commonwealth

Longer term employment

74. The explanatory memorandum to the Bill provides that a job seeker will be able to work in a subsidised position for up to two years. The explanatory memorandum is otherwise silent on what occurs at the end of the two year period.

⁴² See e.g. Department of Health, *National Aboriginal and Torres Strait Islander Health Plan 2013 - 2023* at <http://www.health.gov.au/internet/main/publishing.nsf/Content/natsih-plan>

⁴³ We note, however, that this choice is undermined by the fact that avoiding the TCF provides a powerful incentive to job seekers to accept whatever subsidised position they can take.

75. If a subsidised position is discontinued at the end of the two year period, the job seeker should not be excluded from taking up another subsidised position, and should there be no available subsidised employment position, job seekers should be able to automatically receive their correct social security payment without needing to reapply.
76. More broadly, however, the subsidised employment proposal does not address employment for a period longer than two years. It may be the case that the Bill is not proposed to address this issue, and that the Commonwealth Government may address longer term employment in a separate Bill or policy. In the absence of such a Bill or policy, however, it can only be presumed that the underpinning assumption of the subsidised employment proposal is that after a two year period, a substantive amount of the subsidised positions of employment will become economically unviable after the subsidies cease.
77. While this assumption may eventuate in some instances (especially where the job seeker has developed critical skills, corporate knowledge or is otherwise able to advance within the employer's organisation within the two year period), this assumption may be flawed as the subsidised employment proposal does not increase the demand for unsubsidised labour or encourage growth in industry development. Without attempting to increase the demand for labour, there is a risk that the positions created will become economically unviable once the subsidies cease.
78. This is in contrast to the previous CDEP and the APO NT Model which both aim to develop industries within remote communities. The APO NT Model notes that while there were some flaws with the CDEP, some of the successes included the development of industries that addressed community priorities such as Indigenous Rangers and Night Patrol, which are still sources of employment within remote communities.
79. The APO NT Model's subsidised employment proposal for industry development within remote communities is to establish an investment fund for the purpose of developing local Indigenous organisations to provide services that strengthen economic, social and cultural aspects of the community and thereby provide employment opportunities through subsidised positions. The value of the APO NT's Model is that the subsidies are targeted to assist those organisations to create wholly new employment opportunities. Without targeting the development of new employment or the growth of organisations, there is a risk that existing organisations may employ a jobseeker on the basis that an additional position in their organisation is economically viable at the subsidised rate, but cannot maintain that position once the subsidy ceases.
80. An additional advantage of an investment fund developing local Indigenous organisations is that the fund can target the subsidies to any local Indigenous organisation. The fund could ensure that poorer communities with less employment opportunities can take greater advantage of subsidised employment positions.
81. Further, and while this is not explicitly stated within the APO NT Model, it may be the case that an investment fund could provide extra support for projects and organisations that

target the employment of the more vulnerable job seekers (such as youth and those suffering from a disabilities).

Case management and support

82. NAAJA submits that in order to maximise the benefit of subsidised employment positions, it is necessary for there to be case management and support for remote job seekers.
83. As outlined in the APO NT Model and as a result of the current policy and compliance frameworks, CDP providers' role in a remote community is more focused on compliance with the CDP rather than to provide case management.
84. Further, currently, and unlike the Work for the Dole program, job seekers in remote communities do not have the opportunity to benefit from a "case management phase" as a component of their mutual obligations.
85. The APO NT Model proposes that CPD providers are disbanded to allow the establishment of Remote Job Centres so that more emphasis is placed on case management of the job seekers and specialised support for job seekers within certain categories that have additional barriers to finding employment. The APO NT Model notes that job seekers who are suffering an illness or disability require additional assistance in overcoming barriers to employment and there is a number of younger job seekers who have never had the benefit of paid employment who would benefit from assistance in being supported into the workforce.
86. The critical component of the APO NT Model with respect to long term employment is that the Remote Job Centres will continue to work with a job seeker in a subsidised position so that job seekers are supported in:
 - a. continuing in their position; and
 - b. progressing into higher quality, non-subsidised positions, with a particular focus on those job seekers being able to build capacity to enter into existing jobs within the community that have historically been unnecessarily filled by people from outside the community.
87. As these existing jobs are existing and relatively stable, a structure that assists community members to enter into these jobs could be a relatively effectual way to achieve long term and quality employment opportunities for community members.
88. Providing for case management, as proposed by the APO NT Model, could ensure that the more "employable" job seekers are assisted to move into non-subsidised positions, thereby ensuring that more vulnerable job seekers (such as youth and those suffering from a disabilities) have the opportunity to take advantage of a subsidised position and ultimately also transition into non-subsidised positions.

89. Such a case management model would be a significant support to the efficacy of the subsidised employment proposal and would have the additional benefit of encouraging longer time, higher quality employment that is not dependent on subsidies.

Number of positions

90. The explanatory memorandum to the Bill provides that there will be approximately 6,000 subsidised employment positions under the subsidised employment proposal. It is not clear if these will be full time or part time positions.
91. One of the well-considered and nuanced submissions within the APO NT Model is that if there were too many subsidised positions, these positions may absorb labour some of the labour that could otherwise be used in non-subsidised employment. The APO NT Model therefore suggests that 10,500 part time subsidised positions should be created. This is the number of positions that would stimulate a significant amount of employment that would not absorb the labour that could otherwise be used in non-subsidised positions and was roughly equivalent to the number of participants of the former CDEP scheme.
92. The optimum amount of subsidised positions that are made available under the subsidised employment proposal is equivalent to 10,500 part time positions.

Re-entry into a subsidised employment position

93. The explanatory memorandum provides that a person who has resigned their subsidised employment position or has been terminated due to misconduct will be prevented from another subsidised job for a period of six months.
94. Importantly, and in the context of outlining why a job seeker should not be subject to the TCF if they leave their position, the explanatory memorandum also recognises that job seekers in remote communities may have entirely legitimate reasons for leaving their employment. The explanatory memorandum appropriately provides two examples of these legitimate reasons, that being due to relocation or family violence.
95. These legitimate reasons why a job seeker might leave their position should also form the basis of why they should not be precluded from being able to re-enter a subsidised employment position.
96. We therefore request that an appropriate decision maker (such as a job service provider or the Secretary of the Department of Human Services) should have the discretion to waive the six month exclusion from being eligible for a subsidised employment position.
97. The legitimate reasons for a waiver should not be limited to an exhaustive list, but should at least include where the job seeker:
- a. relocates from their community;
 - b. is fleeing domestic violence;

- c. left their position to commence an unsubsidised position, but becomes unemployed again within the 6 month period;
- d. is being required to provide short term care for a family member (either a child or someone who is ill or suffering from a disability); and
- e. left their position due to their own illness.

Exemptions

98. While NAAJA has serious concerns with respect to the TCF and does not support its implementation, we do support the Bill providing exemptions to the TCF for those in subsidised employment positions. We also submit that if the TCF is rejected (as it should be), then the exemptions should apply to the current compliance framework, in order to ensure that jobseekers can concentrate on maintaining their position.
99. Further, to ensure that jobseekers in non-subsidised jobs can concentrate on maintaining their position and that people are not disincentivised from obtaining non-subsidised employment, we recommend that exemptions to any compliance framework be applicable to people in non-subsidised jobs.