



**Submission to the Senate Finance and Public Administration
Legislation Committee Inquiry**

into the proposed

**Social Security Legislation Amendment (Community Development
Program) Bill 2015**

Northern Land Council

January 2016

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

Dear Committee Secretary,

Submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Social Security Legislation Amendment (Community Development Program) Bill 2015

1. Introduction

The Northern Land Council (NLC) welcomes the opportunity to provide comment on the Social Security Legislation Amendment (Community Development Program) Bill 2015. We note the Government's commitment to improve employment opportunities for Indigenous Australian's, however we have concerns about the Bill, in particular the broad powers conferred onto the Minister, the discriminatory nature of the Bill, and the practical effects these proposed changes will have on remote communities.

2. About the Northern Land Council

The *Woodward Royal Commission* produced two reports, the first recommended that the Commonwealth fund unincorporated bodies (land councils) to co-ordinate and provide input from Aboriginal people into the enquiry, the NLC was established in 1973. The second and final report findings, based on land council's submissions, was presented to the Australian Government in 1974 which was supported by the Whitlam Labor Government. In 1976 the Fraser Government passed the *Aboriginal Land Rights (Northern Territory) Act* (the *Land Rights Act*). Following the enactment of the *Land Rights Act* Northern Land Council became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage our traditional lands' and seas'.

The NLC assists the Aboriginal people of its region by providing services in its key output areas of land and sea management, natural and cultural resource management, land acquisition, mineral and petroleum exploration, economic development and commercial services, land trust administration, native title services and advocacy, information and policy advice.

The NLC works to achieve a vision of the Northern Territory where the land rights of every traditional owner are legally recognised and in which Aboriginal people benefit economically and culturally from the secure possession of their lands and seas.

The *Land Rights Act* creates a three way relationship between traditional Aboriginal owners, Land Trusts and Land Councils in order to combine concepts of Aboriginal

customary law with Australian property law. The Act requires Land Councils to consult with traditional Aboriginal owners (and other Aboriginal people affected by proposals) before giving a direction to a Land Trust to enter into any agreement or take any action concerning Aboriginal land. Under the *Land Rights Act*, traditional owners must give their informed consent, as a group, for a proposal to proceed. The United Nations Declaration on the Rights of Indigenous Peoples principle of free, prior and informed consent is endorsed by the NLC.

Functions of the NLC include:

- Determining and expressing the wishes of Aboriginal people about the use and management of their land and sea estates; and
- Negotiating on behalf of traditional owners for use of Aboriginal land by other parties.

The NLC has statutory responsibility for facilitating economic activity over more than 210,000 km² of the land mass of the Northern Territory, and over 80% of the NT coastline.

Key constituents of the NLC are the residents and traditional owners of Aboriginal lands. Approximately 30,000 Aboriginal people live within the NLC region. Many of our constituents live in towns in almost 200 communities ranging in size from small family outstations to settlements of up to 3,000 people.

Most of the communities are located in remote locations, where the majority of community members practice traditional Aboriginal law and speak an Aboriginal language as their mother tongue.

In 1994, the NLC became a Native Title Representative Body under the *Native Title Act 1993* (the *Native Title Act*). In this capacity, and in addition to its functions in relation to Aboriginal land under the *Land Rights Act*, the NLC also represents the Aboriginal people of the Tiwi Islands and Groote Eylandt. The NLC's role and functions as a Native Title Representative Body are set out under Part 11, Division 3 of the *Native Title Act*.

Aboriginal people are increasingly looking to participate in planning and economic development activities while at the same time seeking to protect our culture and integrity.

3. ISSUES

The NLC does not support the Bill on the following grounds:

1. We submit that the Bill provides the Minister with unfettered power;
2. We submit that the Bill is discriminatory;
3. We submit that the Bill lacks transparency

The NLC has other ancillary concerns set out at point 3.4.

3.1. Unfettered power of the Minister

The NLC is concerned that the Bill provides the Indigenous Affairs Minister with wide ministerial powers to determine and declare which regions will constitute a remote income support region and then to make different social security rules for each declared region.

In determining whether or not a region is a remote income support region, the current Bill allows the Minister the power to consider whether the region is remote; and levels of 'social and economic disadvantage', including 'unemployment, social welfare and education of persons living in the region.'

The NLC is concerned that these are broad and ambiguous parameters for singling out regions to be declared as a remote region. Once such a declaration has been made, the Bill also provides the Minister power to make and apply different social security rules for the region, without consultation or reference to Parliament.

The Minister will be able to determine rules effecting our constituents including:

- work obligations;
- what constitutes work;
- the 'no work, no pay' penalties and penalties for non-compliance;
- what amounts to a 'reasonable excuse';
- functions of CDP providers; and
- the provision of weekly payments.

The NLC is concerned that the Minister will have very broad powers to create and apply different social rules to regions of his choice. If different rules are required, they should be incorporated into legislation, so that they are subject to the scrutiny of Parliament and the Courts. We submit that this Bill in allowing the Minister to declare remote regions and apply different Social Security rules provides the Minister with unfettered power and in turn, is discriminatory, see point 3.2.

3.2. The Bill is discriminatory

Australia is a signatory to several key international human rights treaties including: the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD); and the *International Covenant on Civil and Political Rights* (ICCPR)". Under international law, Australia is bound to comply with these treaties provisions.

The Explanatory Memorandum in the Statement of Compatibility with Human Rights, states that the Bill engages the "Right of equality and non-discrimination" under Article 2 of the ICESCR, Article 26 of the ICCPR and Article 5 of the CERD.

Article 2 of the ICESCR and Article 26 of the ICCPR both uphold that all people should be protected under law, without discrimination as to race. A definition for "racial discrimination" is provided under Article 5 of the CERD:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”

The NLC is unsure as to how the Explanatory Memorandum could state that the Bill is non-discriminatory, when it's purpose is to provide the Minister with the power to single out particular regions for different treatment.

The NLC submits that the Bill discriminates against Aboriginal people and is similar in operation to the imposition of income management and the roll out of the Basic Card. While the Bill does not directly apply to Aboriginal people, its operation applies different rules and restrictions to a disproportionate amount of Aboriginal people. Aboriginal people account for only 3% of the overall population, however, 84% of participants under the CDP caseload are Aboriginal people. The effect of this Bill discriminates against Aboriginal people and as such, is contrary to the CERD.

The Bill allows the Minister to single out regions for different treatment and the majority of the people affected under these changes will be Aboriginal communities. The NLC submits that this is discriminatory in both purpose and effect and as such, it does not comply with requirements under ICESCR, CERD or ICCPR, or the United Nations Declaration of Indigenous Peoples.

3.3. Lack of a transparent review process

The current Bill lacks a transparent review process for CDP provider decisions. A review of CDP provider decisions would be subject to internal review in the same way as the Department of Human Services, and would be unable to be reviewed by the Administrative Appeals Tribunal(AAT).

3.4. Other Concerns

The NLC is concerned that the Bill does not address the rise in CDP penalties. There has been a worrying rise in CDP penalties following the imposition of more onerous Work for the Dole (WfD) requirements and the linking of provider payments to reporting breaches. There is an urgent need to address this rise in CDP penalties.

The Bill aims to provide better incentives for people to take up paid work, however, the benefits of the new income support taper rates may be limited by the operation of strict WfD requirements. Any extra hours worked and extra income will be offset by the 25 base hours not worked for WfD which could result in people working below award rates.

Despite the Bill's goal to transition people off income support payments and into full time paid work, the reality is there is not enough jobs available in these regions. There is a high percentage of Aboriginal people in the areas identified as target regions and there are insufficient jobs to meet the needs of Aboriginal people in these regions.

The Explanatory Memorandum does not deal with the issue of orthodox employment unavailability in remote locations. This is a serious issue and will further exacerbate the levels of unemployment that exist in the bush. The kinds of employment Indigenous people want in some of these places are not orthodox, as evident by the fact that RJCP and CDP do not come close to CDEP for local capacity development and job creation. For example, CDEP led to the successful employment program now known as 'ranger' work funded by the Commonwealth's Working on Country Program, again another government program becoming burdened by bureaucrats and ministerial interference with no evidence based policy.

The NLC is also concerned at the lack of safeguards provided for in the Bill. We would like to see requirements for proper consultation and input by communities into which rules apply, minimum rights and protections for individuals and vulnerable people, a maximum to penalties, reduction in WfD requirements to ensure no one is working below minimum wage and the removal of providers conflict of interest in compliance.

This Bill appears to take a punitive approach rather than a constructive collaborative approach and there is no requirement that the providers are locally owned and driven. The provision that allows the Secretary to be a Provider increases the bureaucracy involved in Indigenous peoples lives, constrains and limits local decision making, and ultimately ownership.

The memorandum is silent on 'community development', that is driven by the community to design their own programs, use their own monies and deliver programs independently of the government. The claims of violence in the memorandum are outrageous as a credible reason to support this Bill.

4. CASE STUDY: WARRUWI A COMMUNITY DRIVEN MODEL

A recent case study in Waruwi highlights the need for local job providers with local knowledge who understand the requirements of their communities and the need for proper consultation and partnerships between communities, job providers and the Government.

After successful campaigning in Waruwi, the Yagbani Aboriginal Corporation ('YAC') has taken over as local provider from external provider, Jobfind Centre Australia ('JobFind'). JobFind is a privately owned company based in Sydney which had won the contract for the Remote Jobs and Community Program ('RJCP') and was responsible for providing jobs and training for participants in Waruwi.

Representatives for YAC stated that while JobFind was responsible for the contract and receiving payment, they had not been running programs or training and had done little for local people. YAC won the contract following extensive campaigning and an investigation into the situation by Federal Indigenous Affairs Minister, Nigel Scullion.

YAC Arts and Culture Manger, Brenda Westley explained why the YAC campaigned to take over from JobFind, "Being a Sydney based private

organization, they weren't catering out here, they weren't running programs or training, there was nothing really happening, that was the reason Yagbani put their hand up to take over."

Warruwi Elder and YAC Chairman voiced the importance of a local provider. "We know what's needed, where we're going. We can monitor staff and clients right here, but when it's controlled outside, their head office is based in Sydney, it's hard to contact them. They did very little in relation to communication with clients and then they took off."

Westley reflected on the lead up to the change, "We won the contract through complaining and campaigning, we withdrew permits, held media interviews with ABC; once Scullion got involved there was an investigation, from there he broke through walls and had the ability to get more answers."

The official launch date for YAC as the Warruwi provider is scheduled for Monday, February 1st. Brenda explained that the YAC has been very busy in the lead up to launch, and that the contract came with many rules, restrictions and accountability. The YAC has been in consultation with the Department of the Prime Minister and Cabinet (PM&C), and the Ironbark Aboriginal Corporation in Darwin.

The PM&C has come to Warruwi and worked with the Elders and the YAC board. While there are strict obligations in relation to reporting, non-attendance and valid reasons, there has been flexibility in deciding what constitutes work, creating job plans, training, individual work skills planning and the hours that participants can work. Participants have a choice in the type of work they complete and hours can be flexible.

"They are open to working with people, what they want and what they want to do [for work]. They [PM&C] are saying there have to be minimum hours, but it doesn't have to be set hours. If it's raining or hot, there can be flexibility to come in the afternoons or early mornings. They are allowing us and participants that flexibility. That's what the board campaigned about, previously it was too controlled, but the PM&C accepted that. They're saying just be active and participate in activities. So long as participants are completing their hours, that's what we have to report on. It is now flexible, whereas previously it was set hours. They don't want everyone lining up, dressed up, but standing around because it doesn't fit with the activities. So there is that allowance now which makes life easier."

The YAC has received lots of support and excitement from the community, with locals feeling that the new provider will make a big difference. "Being a local organization the community is responding with excitement, rather than just working for the dole, we're doing something for own community, our own kids, and our own future. It's a big difference."

Warruwi is one example of where the Government has been responsive to the local decision making authority, the individual community requirements and engaged in proper consultation. The case study also highlights the problems of having an external provider operating within a remote community.

RECOMMENDATIONS

1) **The Northern Land Council opposes this Bill and recommends that it is not supported based on the:**

a) broad, unfettered ministerial powers it confers onto the Minister for Indigenous Affairs;

b) its discriminatory nature; and

c) the lack of transparency surrounding the review process.

2) **The Northern Land Council calls on the reinstatement of local authority and stresses the need for proper consultation** with communities and flexibility in negotiating rules for Providers and how they operate within communities.

3) Further the **Northern Land Council endorses the attached:**

a) ***Principles for developing partnership centred approaches for non-Indigenous NGOs working with Aboriginal organisation and communities in the Northern Territory***, and

b) ***Northern Territory Government and Non-Government Community Services Sector*** and recommends that those guiding principles should apply to external Providers.

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