

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

ACTU Submission to the Finance and Public
Administration Legislation Committee

29 January 2016

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Introduction

1. The Australian Council of Trade Unions is the peak body representing almost two million working Australians. The ACTU and its affiliated unions have a long and proud history of representing workers' industrial and legal rights and advocating for improvements to legislation to protect these rights.
2. The ACTU has a proud history of fighting shared struggles with Aboriginal and Torres Strait Islander workers for wage justice and equality. Since our establishment in 1927, the ACTU has had a tradition of opposing discrimination, oppression and exploitation, and supporting Indigenous rights.
3. The ACTU welcomes the opportunity to make a submission to Finance and Public Administration Legislation Committee.

About the Bill

4. The *Social Security Legislation Amendment (Community Development Program) Bill 2015* (the Bill) proposes a number of changes to social security laws. The Bill seeks the divestment of powers, currently residing with the Parliament, to the Minister for Indigenous Affairs (the Minister).
5. The Bill seeks to establish a new social security payment 'remote income support' which will be applied in 'remote income support regions' as determined by the Minister.
6. The Bill seeks to exclude Community Development Program (CDP) workers from basic industrial relations standards, including exclusion from Commonwealth Occupational Health and Safety and Workers Compensation laws when undertaking 'obligations' as determined by the Minister.

7. In addition, the Bill will seek to establish a payment and compliance regime administered locally by CDP Providers, which is currently administered by the Department of Human Services through Centrelink.
8. Finally, the Bill proposes to introduce new income support taper rates for CDP workers.

Background and Context

9. These proposed amendments are intended to build on the Community Development Programme (CDP) introduced on 1 July 2015.
10. The CDP operates in over 1,000 communities across 60 remote regions which are dispersed across 75% of Australia.
11. Currently there are around 37,000 CDP participants of which 31,000 are Indigenous (84%).
12. The reforms introduced under CDP, inspired by *The Forrest Review 'Creating Parity'* (2014)¹, force jobseekers into mandatory 'work for the dole' jobs/activities and highly incentivises employers to access this source of unfettered labour.

¹ See Recommendation 22: Remote Job Centres and Recommendation 23: Local Governance

The ACTU's Position

Ministerial Powers

13. The proposed changes would give unprecedented power to the Minister for Indigenous Affairs to make new rules for 'remote income support' recipients without reference to Parliament.
14. While the Bill provides that responsibility can be devolved, detailed responsibility of CDP Providers for payments, frequency of payments and immediate penalties are not specified in the Bill. Similarly, the location of 'remote income regions', what are reasonable absences and what is considered an obligation is not detailed. In the absence of these specific provisions in the Bill it is implied that the Minister would have power to detail this in regulation outside the scrutiny of Parliamentary processes.

CDP Workers & Employer Incentives

15. In the Bill, CDP workers fulfilling obligations are specifically excluded as being employees. The Bill specifically states²:

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

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

² 1061ZAAZA 'Determination of scheme for remote income support recipients' at (4) (a-d), pp.13-14

(d) an employee for the purposes of the Fair Work Act 2009

16. This is cause for serious concern given the way that participation requirements (obligations) and employer incentives interact.
17. CDP funding is available to employers who engage remote job seekers. There are two (2) streams available: 1) Employer Incentive Funding which is \$7,500 (plus GST) for taking on full time employees. Funding is paid once the worker has been employed for 26 weeks; and 2) CDP Hosted Placements where employers can access free labour for up to six (6) months (26 weeks)³.
18. The CDP Hosted placement incentive is available to employers with over ten (10) employees and the number of workers that can be hosted increases based on the number of employees in the business. For example, “[e]mployers including businesses and *government agencies*⁴, with over 20 employees can have four hosted placements plus one additional placement for every 10 ongoing employees over 20 employees.”⁵
19. CDP Hosted placements “give employers an opportunity to get to know job seekers” as it is described as a “long term work experience opportunity.”
20. Employers have responsibilities to “ensure that there is a reasonable ratio of job seekers [workers] to employees” and that workers receive “on-the-job-training and appropriate supervision.” Workers “remain on income support and

³ Community Development Programme: Opportunities for Employers – Factsheet
<<http://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/remote-jobs-and-communities-programme-rjcp/information-and-factsheets>>

⁴ Author’s emphasis

⁵ Community Development Programme: Opportunities for Employers – Factsheet
<<http://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/remote-jobs-and-communities-programme-rjcp/information-and-factsheets>>

have mutual obligations” and hours of work are “up to 25 hours a week or 50 hours worked flexibly over a fortnight.”⁶

21. Under this system, a CDP worker will be forced into 25 hours per week labour, for up to six (6) months (26 weeks), and will be denied access to minimum employment standards.
22. The system facilitates workplaces which will have two (2) tiers of workers: 1. Employees of the business / government agency who at a minimum would be covered by the relevant Award or an enterprise agreement. And 2. CDP workers who would be paid less than the minimum wage (\$10.50 per hour), have no right to superannuation and potentially have no safety net regarding occupational health and safety and worker’s compensation if they have an accident or incident in the workplace.
23. Given that this employer incentive is open to medium sized businesses and government agencies for up to six (6) months, it begs the question that if work is readily available for hosted placements, even at entry level roles, why free labour is being offered rather than incentives to provide traineeships and/or some form of ongoing employment.
24. Furthermore, with employers only “encouraged to offer employment to CDP Participants at the end of their placement”⁷ there is limited incentive (\$7,500 under the Employer Incentive Funding) to offer ongoing employment when there is a pool of free CDP workers available. Rather than increase employment

⁶ Community Development Programme: Opportunities for Employers – Factsheet
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⁷ Community Development Programme: Opportunities for Employers – Factsheet
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opportunities it is more likely that downward pressure is put on the availability of local employment by diminishing the demand for workers from employers.

New Income Thresholds & Paid Work

25. The benefit of increasing the income threshold of CDP workers to \$650 per week “broadly equivalent to the minimum wage”⁸ is limited by the operation of CDP requirements and poses some serious questions about the relationship between ongoing Work for the Dole ‘activities’ and “casual and intermittent work when and where it’s available.”⁹
26. CDP workers, under Work for the Dole requirements, must work 25 hours per week, 5 days per week. Under the proposed amendments, if a CDP worker “undertakes paid work instead of attending their CDP activities, they would receive less income support (as penalties are applied) and receive more real income.”¹⁰ To maximize the possible benefits of the increased income threshold a CDP worker would need to complete the required 25 hours per week Work for the Dole and then additional hours of employment.
27. The current minimum wage is \$17.29 per hour (\$656.90 per week) with a maximum of 38 ordinary working hours. Work for the Dole workers are paid \$10.50 per hour. It is assumed that any additional hours of employment would be regulated by the at least the minimum wage and national employment standards or the relevant industrial instrument.

⁸ Social Security Legislation Amendment (Community Development Program) Bill 2015: Explanatory Memorandum, p. 9

⁹ Minister Scullion, Second Reading Speech, Wednesday 2 December 2015

¹⁰ Social Security Legislation Amendment (Community Development Program) Bill 2015: Explanatory Memorandum, p. 9

28. The salient issue here is the blurring between Work for the Dole work and additional work. While there may be some benefit in increasing income thresholds, CDP workers will be disadvantaged by the fact that they could be doing the same work, for the same employer, at different rates of pay and employment conditions.

Case Study

Kim is doing data entry work with a local government agency under a CDP Hosted Placement.

She works 5 hours per day, 25 hours per week as required by Work for the Dole.

She has been working there for one (1) month and is showing potential. She has had previous experience in an Aboriginal community organization, before it lost its funding in the last Indigenous Advancement Strategy funding round.

Kim is well liked in the office and is known as a hard and productive worker.

There is about to be a peak in workload and Kim has been approached by her manager to work an extra 2.5 hours a day (12.5 hours per week).

Kim will be maximizing her benefit under the new income thresholds, earning an extra \$432.25 (before tax) per fortnight¹¹.

Kim will be working 25 hour per week at \$10.50/hour and 12.5 hours per week at (at least) \$17.29/hour for exactly the same work, with the same employer.

29. The increased income thresholds may provide an incentive for workers to take up additional work when and where it is available but fundamentally it sets up unequal, inequitable and discriminatory workplace practices and puts downward pressure on wages.

¹¹ Based on the minimum wage \$17.29

CDP Workers and Occupational Health and Safety and Worker's Compensation

30. While participants may be at least partially covered by some State and/or Territory laws in relation to occupational health and safety, this coverage is patchy at best. The Workplace Health and Safety Act 2011 provides comprehensive coverage and is considered to be the best model in relation to health and safety laws in Australia.
31. Without the protection of the Workplace Health and Safety Act 2011 and the Safety, Rehabilitation and Compensation Act 1988 there is a very real possibility of CDP workers being left without access to fair compensation or rehabilitation in the event of injury or death.
32. Furthermore, the responsibility for compliance is unclear. Does compliance lay with the host employer or the CDP Provider? What is clear however, is that the power relationships established by Work for the Dole is such that CDP workers would have very little agency or voice for fear of being penalised and losing income.

CDP Providers – Contracting Out Government Services

33. Whilst the Explanatory Memorandum seeks to justify this transfer of power to the Minister as strengthening “incentives for job seekers in remote Australia” some of the changes proposed such as weekly payments and immediate penalties are already provided for in the *Social Security (Administration) Act 1999* (s43) and the proposed *Social Security Amendment (Further Strengthening Job Seeker Compliance) Bill 2015* respectively.

34. The rationale for devolving responsibility of administering payments and penalties to local CDP Providers is to simplify the compliance framework so that “job seekers in remote Australia understand the link between attendance at CDP activities and income support payments.”¹² The Bill allows the Government to contract out current functions of the DHS to CDP Providers.
35. This contracting out of functions must be viewed in conjunction with CDP Provider funding contracts and performance measures which directly tie service fees to participation in Work for the Dole/CDP activities, including reporting non-compliance. Under the current system the role of a CDP Provider is to assist job seekers in employment activities and report non-compliance. It is the function of DHS, who has no financial or other incentive to administer penalties, through a system of checks and balances. Under the proposed arrangements CDP Providers will directly administer penalties.
36. Participants will still have the right to appeal decisions of the CDP Provider, however clear processes need to be established which ensure people have access to the safety net and ensure the minimisation of potential financial conflicts of interest for CDP Providers.
37. Furthermore, with these changes to the role and function of CDP Providers thorough consideration and actions need to be put in place to ensure that those working in CDP Providers have the appropriate training, mentoring and support available to transition to these new roles. DHS are highly trained public servants who have access to ongoing support by virtue of their location and government role. This training and ongoing support must be available to all workers who are located in remote CDP Providers.

¹² Social Security Legislation Amendment (Community Development Program) Bill 2015: Explanatory Memorandum, p. 3

38. It is important to note that there may be increased Occupational Health & Safety concerns for workers in CDP Providers. DHS has comprehensive systems (training, duress alarms and security resources) to deal with the difficult or threatening situations that often arise in the course of daily duties. This same level of training and security measures must be implemented in remote CDP Providers.

Conclusion

39. While aiming to incentivize workers, simplify the compliance framework and allow for a localized approach the transfer of discretionary powers to the Minister, over the system of Parliamentary scrutiny, is likely to create more complexity, uncertainty and unfairness than it will resolve.
40. Both the Explanatory Memorandum and the Minister's Second Reading speech fail to provide any explanation for the introduction of these measures beyond claiming that people living in remote locations needs to be penalised further and more immediately. This punitive approach is clearly ideologically driven and fails to the address the systemic failures of the CDP. Rather than recognizing the uniqueness of remote Australia and building positive alternate economies, this Bill establishes CDP as a compliance system not an employment or economic development initiative.
41. The ACTU has significant concerns that the CDP and proposed amendments establish a second tier of Australian workers, who are forced into labour arrangements and are denied the same employment standards as other Australian workers.
42. The ACTU are concerned that the proposed amendments might mean exclusion from Occupational Health and Safety and Worker's Compensation laws and it should be clarified that this is not what is intended.
43. The amendments regarding new income thresholds provide an opportunity for increase earning capacity. However, this establishes unequal and discriminatory workplace practices, especially in relation to the minimum wage and standard employment conditions.

44. Rather than a system which punishes individuals and their communities, the ACTU agrees with the Social Justice Commissioner who states in the *Social Justice and Native Title Report 2015* “Aboriginal and Torres Strait Islander peoples require support from government to live in remote communities, and...this requires a broader discussion about how to foster sustainability in these communities. Our people should not be penalised for a lack of employment opportunities or for being unable to participate in work-like activities.”¹³
45. The ACTU would welcome a discussion which recognizes “the plurality of local economies operating in remote communities”¹⁴ and believes that the future sustainability of healthy, remote communities is contingent on working towards models which foster hybrid economies and community employment programs, programs and economies which benefit the collective community and reward individual workers with pay and conditions that are commensurate to the national minimum employment standards¹⁵.
46. The ACTU opposes this Bill.

¹³ Gooda, M (2015), *Social Justice and Native Title Report*, Human Rights Commission, p. 60

¹⁴ Gooda, M (2015), *Social Justice and Native Title Report*, Human Rights Commission, p. 60

¹⁵ See Thomassin, A & Butler, R (2014), *Engaging Indigenous Encomoy: A Selected Annotated Bibliography of Jon Altman's Writing 1979 – 2014*, CAPER

Human Rights Compatibility

1. Attention needs to be drawn to the *Statement of Compatibility with Human Rights* (the Statement) provided in the Explanatory Memorandum.
2. Whilst the ACTU understands that the views expressed in the Statement are the views of the proponents of the Bill, and the assertions made regarding compatibility will be tested before the Parliamentary Joint Committee on Human Rights, we submit our observations for consideration.
3. The Statement posits that the Bill promotes the right to an adequate standard of living recognized in Article 11 of the ICESCR by “allowing remote income support recipients to earn close to the minimum wage while still receiving their remote income support payments”. This measure “consequentially promotes the ability of those individuals to improve their standard of living.” Given the proposed changes, coupled with incentives offered to employers is likely to create a pool of free labour, it is hard to reconcile this position with an increase in available jobs. In fact the reverse is more probable where workers become further entrenched in their reliance on income support as they are forced into continuous Work for the Dole jobs.
4. The Statement posits that the Bill promotes the right to work recognized in Article 6 of the ICESCR by the State taking steps to full realization of that right by including “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and productive employment.” What the Statement fails to outline is the first clause in Article 6 of the ICESCR: “State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” The proposed measures in the Bill are incompatible with Article 6. The punitive

measures imposed on job seekers, which force people into work for substandard wage and employment conditions, entirely negate their right to freely choose or accept work.

5. The Statement posits that the Bill is consistent with the rights to equality and non-discrimination recognized in Article 2 of the ICESCR and Article 26 of the ICCPR respectively. These Articles provide that “all persons are entitled to exercise their rights, and to equality before the law, without discrimination.” Further, Article 5 of the CERD “reinforces this general prohibition and provides that State Parties ‘undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law...’”. The Bill is deemed to be consistent with these Articles because the “measures will apply equally to all job seekers who reside within remote income support regions across Australia.” What is curious about the Bill is its source. If the Bill is consistent with the rights to non-discrimination and is about employment programmes and job service providers, why is the Minister for Indigenous Affairs tabling the Bill and the recipient of powers regarding social security laws in remote regions rather than the Minister for Employment? It appears to be more than a coincidence that the Minister for Indigenous Affairs is championing legislation that will affect regions where up to 84% of the population is Indigenous. These measures are likely to have a disproportionate impact on Indigenous peoples and may not be reasonable or proportionate in some cases, making them inconsistent with the non-discrimination and equality before the law.
6. In the Statement’s conclusion it is constructed that the measures in the Bill are compatible with human rights. And to “the extent (if any) that they limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of supporting job seekers in remote Australia”. What is completely illegitimate about not only the Statement but the Bill is that it ignores, indeed tramples, rights expressed under the UN

Declaration on the Rights of Indigenous Peoples (the Declaration). Australia affirmed its support for the Declaration in 2009.

7. Whilst many of the articles in the Declaration have broad application to the proposed legislation, for example Article 2 and Article 3 which cement Indigenous peoples are free and equal to all others and Indigenous peoples' have a right to self-determination, the Bill directly contravenes Article 17 (1) and (3). This Article declares "Indigenous individuals and people's right to enjoy fully all rights established under applicable international and domestic labour law" (1) and that "Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary." The CDP, its forced labour through Work for the Dole requirements and measures which restrict workers earning capacity and access to the national employment standards all disregard these rights.

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D No: 09/2016

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