

## **Submission to the Inquiry into the Social Security Amendment (Community Development Program) Bill 2015**

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### **Summary**

The Social Security Amendment (Community Development Program) Bill 2015 (henceforth the CDP Bill) looks to address two interlinked problems perceived by government in current labour market program arrangements for remote regions. From 2013–2015 this program was called the Remote Jobs and Communities Program (RJCP) in which over 80 per cent of participants were Indigenous Australians. From late 2014 RJCP was reformed into the Community Development Program (CDP). The CDP Bill looks to introduce further reform to be implemented from 1 July 2016 in four trial regions out of the 60 currently covered by CDP.

The first main problem identified by government is that both the RJCP, and now CDP, are not generating adequate mainstream employment and training outcomes as measured by statistical metrics.

The second is an extraordinarily high rate of breaching quantified by the government itself at 12 times the national rate for those people who are unemployed and receiving conditional income support. These high breach rates are further entrenching Indigenous poverty but also clearly reflect an unwillingness to comply with stricter rules around ‘no show, no pay’ that have been introduced to discipline participants.

To deal with these problems the Turnbull government is proposing to change the social security law to create a new ‘remote income support’ payments system. This system looks to borrow some of the positive elements of an earlier Indigenous-specific program, the Community Development Employment Projects (CDEP) scheme that began in 1977 and was abolished as an element of RJCP reform in 2013.

It is proposed that trials are conducted in four regions with 2000 CDP participants out of the total of 37,000 in 60 regions. The proposed system will test new payment and activity arrangements; alter job seeker compliance rules to reduce breaching; and introduce new income thresholds aiming to reduce poverty traps with the assumption this will drive up employment rates.

Yet the proposed CDP Bill is deeply flawed and it could perpetuate, or even exacerbate, the vulnerability and poverty of people living in remote areas, the very issues the Bill is trying to address. In other words, it risks increasing disengagement from the CDP and, of greatest concern, intensifying deep poverty associated with a high reliance on already inadequate income support payments in remote Australia.

In this submission I begin by briefly outlining my own research background and the policy positions on complex development issues, especially CDEP, that I have taken over the past four decades. I then do four things:

- 1 I provide a synoptic policy history to track the reform pathway over the past decade that has seen the move from CDEP in its original form (1977–2005) to new forms of

CDEP (2005–2013) and then RJCP (2013–2015) and finally to CDP (2015 to the present). This history is essential to gain some understanding of what anthropologist Tess Lea has referred to as the ‘policy ecology’ of the latest set of proposals that are looking to revive elements of the CDEP scheme, implicitly acknowledging its relative success, even as it has finally been eliminated after 40 years.

- 2 I then outline the latest experimental proposal incorporated in the CDP Bill that has been developed over the past 12 months by the Commonwealth bureaucracy.
- 3 I identify a range of conceptual and technical problems with the CDP Bill’s proposed experimental system that are likely to exacerbate currently identified issues that need urgent remedial action. Much of the problem here is that those who have devised the CDP Bill either do not understand or are wilfully ignoring those elements of the CDEP scheme that are supposedly being re-introduced.
- 4 Finally I provide a set of five recommendations that will chart possible ways forward that will reduce the likelihood of yet another expensive failure in experimental Indigenous policy for remote Australia.

## Background

I want to begin by providing a little background about my personal entanglements researching Indigenous labour market and development issues in remote Australia and my attempts to influence policy in this complex area. I do so to establish my bona fides but also to be transparent about my policy positioning especially in relation to the CDEP scheme on which the CDP Bill purports to draw.

My academic background is in economics and anthropology and since I came to Australia in 1976 I have undertaken research about remote Indigenous Australia. From 1990 to 2010, I was the foundation director of the Centre for Aboriginal Economic Policy Research at the Australian National University. I am currently employed at the Alfred Deakin Institute for Citizenship and Globalisation (effective 1 February 2016) and remain as an emeritus professor with ANU.

Over the years I have undertaken a great deal of research on Indigenous labour market issues. An annotated bibliography of my writings can be found at <http://caepr.anu.edu.au/Publications/WP/2014WP96.php> with one section focused just on the CDEP scheme.

Most recently I have been a Chief Investigator on an Australian Research Council (ARC) Discovery Project ‘From welfare to work, or work to welfare?: Will reform of the Community Development Employment Program help close the employment gap?’. This project is nearing completion with findings to be published in 2016 in a monograph titled *Better than welfare? Work and livelihood for Indigenous Australians after CDEP* edited by Kirrily Jordan.

Over many years now I have championed CDEP as the most effective institution devised so far by the Australian government for dealing with enormous and diverse Indigenous labour surplus challenges across remote Australia.

This advocacy has been based on sustained empirical and conceptual research over many years.

At a conceptual level, when I was working as an economist at the University of Melbourne in 1976 and 1977, CDEP was just being piloted. Along with my colleague John Nieuwenhuysen, we devised a model that demonstrated the inherent potentiality of the CDEP scheme to maximise the utility of participants who preferred part-time work owing to the flexibility and community-control that underpinned the scheme. This model and associated discussion was published in the book *The Economic Status of Australian Aborigines* (1979).

At an empirical level, I have undertaken substantial research to collect primary data on the workings of the CDEP scheme mainly in western Arnhem Land but also in other remote regions. In particular I have collaborated with the Bawinanga Aboriginal Corporation—historically the largest and most successful CDEP organisation in remote Australia. Long-term field-based empirical observations have allowed me to document just how effective CDEP was in generating employment opportunity where available, providing income support and underwriting community commercial and social enterprises. This was especially the case in situations where CDEP was administered by well-resourced organisations with adequate institutional capacity.

I have also undertaken empirical analysis using secondary sources like the five-yearly census and special surveys like the National Aboriginal and Torres Strait Islander Social Survey and the Labour Force Survey. This research invariably showed that CDEP improved outcomes for participants when compared to either the unemployed or those not in the labour force in terms of extra hours worked, extra income earned, and—importantly for many—opportunity to participate in non-market productive activity and cultural prerogatives and family obligations (participation in which improved subjective assessment of wellbeing as documented by economist Michael Dockery).

It was this research that led me to the conclusion that CDEP was probably the most effective Indigenous-specific institution devised by government since the late 1970s.

Subsequently, from 2004 I have become an outspoken critic of decisions by successive Australian governments to incrementally reform CDEP over a decade-long period to its demise from 1 July 2015. This critique was based on research that showed the CDEP institution worked well and was being unfairly judged (rather than evaluated) but also because I believed that it was being replaced by inferior institutional forms.

Unfortunately, this view has proven correct, especially in remote Australia, as the government's own assessment now demonstrates. In January 2015 I was highly critical of Senator Scullion's proposals for CDP on a number of grounds, but especially because the new program required able-bodied participants aged 18–49 years to work for 25 hours per week for their Newstart Allowance equivalents at arguably discriminatory hourly rates well below award rates.

Over the years I have advised governments of all political persuasions, agencies (such as the Aboriginal and Torres Strait Islander Commission and before that the Department of Aboriginal Affairs and after that the Commonwealth Department of Employment in various manifestations) and Indigenous community organisations (especially the Bawinanga Aboriginal Corporation) on how to improve CDEP; and I have made a number of submissions to government inquiries. This advice has invariably focused on options to enhance the effectiveness of CDEP and as a general rule it has been ignored.

I want to highlight two policy interventions attempted because I will return to them in my recommendations.

First, in 1987 I was invited by the then Australian Council for Education and Training to undertake a consultancy to explore options for the delivery of income support to remote homelands and outstations. In a report *The Economic Viability of Aboriginal Homelands and Outstations* (1989) co-authored with Luke Taylor, I recommended a Guaranteed Basic Income for Outstations scheme with residential conditionality that was never seriously considered.

In recent years there has been a growing global interest in unconditional Basic Income schemes, an interest informed by recognition that with technological change and population growth there is a global over-supply of labour and that the goal of full-employment is no longer realistic—especially for those employed casually and precariously and those only marginally attached to labour markets. There is considerable material on basic income trials internationally on the site Basic Income Earth Network (<http://www.basicincome.org/>) of which I am a member.

In 2015 my interest in unconditional basic income, that was a feature of some CDEP schemes, was revived in a collaborative project involving Guy Standing. I have recently contributed a chapter 'Basic income for remote Indigenous Australia: prospects for a livelihoods approach in neoliberal times' to a book *Basic Income in Australia and New Zealand: Perspectives from Neoliberal Frontiers* to be published in March 2016.

Second, in late 2010, I collaborated as policy adviser to the Aboriginal Peak Organisations of the Northern Territory (APONT) to propose a new program—the Community Employment and Enterprise Development Scheme (CEEDS)—to the Australian government. This proposal was made as the CDEP scheme was being reformed and it provided an alternative especially tailored to the needs of remote Indigenous communities. The proposal was provided to the government in early 2011 as well as to the then Opposition (now government) and was again forwarded to the Department of Prime Minister and Cabinet as recently as in May 2015 as the CDP Bill was being developed.

To the best of my knowledge neither the government nor opposition have formally responded to the CEEDS proposal, either positively or negatively.

My latest attempt to influence policy occurred on 14 May 2015 when I participated as an invited guest at an unusual meeting in Parliament House, Canberra between Senator Scullion and members of the Opposition and government officials. I made my views quite clear on the inadequacies of the proposed CDP reforms and documented these after the meeting. To avoid any perception that I might be conflicted in providing this submission, I want to make it quite clear that I can see none of my suggestions incorporated in the CDP Bill that is the subject of the current Inquiry.

#### **A synoptic policy history: From CDEP to RJCP to CDP**

There are many ways that the policy history that has culminated in the CDP can be told. I want to do this briefly here recognising that this is but one of many possible interpretations depending in part on one's disciplinary perspective. (A detailed policy history from the perspective of political science and public policy on the rise and fall of the CDEP scheme to 2013 has been provided by William Sanders in 'Coombs' bastard child: The troubled life of the CDEP Scheme', *Australian Journal of Public Administration*.)

I provide this synopsis for two reasons.

First, while the CDP and its immediate predecessor the RJCP fall under the ministerial ambit of the Minister for Indigenous Affairs, they have been promoted since establishment as labour market programs for remote Australia, not Indigenous Australians. This distinction though appears largely cosmetic as over 80 per cent of participants are Indigenous and the program rationale looks to target the pathways to employment and the perceived work-readiness deficiencies of Indigenous people. This seems to me to be a contradiction, even pretence, and so I will focus my commentary on remote living Indigenous people who are not formally employed.

Second, and somewhat paradoxically, the establishment of the RJCP grew in large measure from a prolonged critique of the CDEP scheme that was reformed to extinction. Subsequently, RJCP was criticised by Minister Scullion and replaced by the CDP, with most changes focusing on compliance. Now in the CDP Bill we see attempts to revive elements of the CDEP scheme (beyond its name—CDEP and CDP are hard to distinguish in spoken English) just six months after its abolition. But even as this is being mooted it strikes me that what made the CDEP scheme both successful and popular is poorly understood especially by the current generation of bureaucrats charged with the latest round of experimental proposals.

So to reiterate what has been documented on numerous occasions in the published literature, the CDEP scheme was established on a pilot basis in 1976–77 to address a combination of two linked developments. In the early 1970s unemployment benefits (and other income support payments) began to be introduced to remote Indigenous people as Australian citizens. But this was an inappropriate institution for the context, that is, there were very few mainstream jobs at these places, so the social democratic rationale to assist the unemployed temporarily until employment was secured was empirically unsound given the limited demand for labour.

And so a new more appropriate institution, the CDEP scheme, was devised with the assistance of HC Coombs. Its piloting was negotiated with a small number of remote communities. The CDEP scheme was a form of mutual obligation program that engaged participants in a range of community development, service delivery and enterprise development projects, while also providing income support to participants where there were no employment possibilities (bearing in mind that the social security income support safety net for the aged, people with disabilities and sole parents operated alongside the scheme). Its key features were that it was funded from block grants that were calculated with a notional link to welfare entitlements. A social compact for payment was struck between participants and their community organisations not the Australian government.

This new institution proved very popular and it grew rapidly especially from the late 1980s as an element of the Hawke government's Aboriginal Employment Development Policy (that aimed to eliminate the disparity in employment rates between Indigenous and non-Indigenous Australians by the year 2000). The CDEP scheme assisted this national goal because participants were classified as employed as indeed they were according to International Labour Organization convention used by the Australian Bureau of Statistics. The scheme was popular with many Aboriginal communities because of its inherent flexibility that worked far better than rigid welfare. This was demonstrated time and again in

research undertaken by myself and others. By 2005 over 35,000 Indigenous people participated in the scheme that was administered by 265 community-based organisations.

From 2004 the Howard government began a reform process that progressively undermined the scheme's effectiveness. The reasons for this are linked to a complex set of explanatory factors, some of which made sense at the time, some of which were spurious and mainly ideological. Like much in Indigenous policy the 'reform' of the CDEP scheme is open to vigorous debate; here is my analysis.

From the late 1990s there were two tropes that were increasingly capturing the policy imagination. One was that a progressive and culturally over-tolerant liberal consensus was harming rather than improving Indigenous prospects in remote Australia. The other was that the CDEP scheme provided Indigenous participants a sheltered niche that precluded the taking of mainstream employment during boom times.

The former trope was popularised and given moral authority by the writings and influence of Noel Pearson, Marcia Langton and the Cape York Institute and was predicated on a conflation of CDEP with welfare. This false logic went something like this, and I simplify considerably. Welfare dependence and inactivity leads to individual and community dysfunction. The CDEP scheme is a form of welfare. Therefore CDEP also leads to individual and community dysfunction. These connections were asserted but never empirically demonstrated. The proponents of these arguments refused to acknowledge that the CDEP scheme was a government program with only notional links to welfare.

Another associated critique of CDEP especially favoured by Langton after her Charles Perkins Oration lecture of 2002 was based on the observation already made by Will Sanders and myself in 1991 that CDEP labour could be deployed to substitute for legitimate social services expenditures by all levels of government. Unfortunately, this problem was sheeted home by Langton to the CDEP institution and not federal, state and local governments who exploited this possibility, this was an unfair form of responsibility shifting by Langton that is not too dissimilar from the cost shifting that does occur in many contexts.

The solution to this problem was not to abolish CDEP, but to hold governments accountable for equitably meeting the citizenship entitlements of remote-living Aboriginal people on the basis of need. Sadly as a result of the reform process and the disappearance of the CDEP scheme the situation today is far worse because mandatory 'work for the dole' rules in remote Australia see people undertake such work for governments for below award rates.

The second trope was fuelled by early 21<sup>st</sup> century neoliberal triumphalism and the long boom that saw the income of employed Australians rise rapidly. An emerging view in policy circles was that individual shortcomings and not structural factors were the cause of Indigenous disadvantage. This trope was given moral authority by the naturalisation of the question that was difficult to dispute: Shouldn't Indigenous people share equitably in this explosion of national wealth?

It was during this period that terms like the 'real' economy and 'real' jobs became ubiquitous in policy discussions in Canberra, although neither was rigorously defined. These are particularly inappropriate for the circumstances of many remote Indigenous communities that are service towns underwritten by the public sector with limited production of goods and services either for export or local consumption.

Many other factors contributed to the snowballing demands of the powerful—politicians, bureaucrats, right-wing think tanks and the conservative media—for the abolition of the CDEP scheme; such calls did not emanate from ATSIC or from participants in the scheme or their representative organisations. These included mutual obligation welfare reform in the aftermath of the McClure Review of 2000 that sought to rewrite the social compact between income support beneficiaries and the state; the deep suspicion and then abolition of ATSIC and the resultant short-term transfer of the CDEP scheme to the employment portfolio (where its community development aspect that is now coming back in vogue was forgotten as bureaucrats judged the scheme myopically as a mainstream employment program only); and the National Apology and the setting of National Indigenous Reform Agreement targets by the Rudd government and an associated perception that the CDEP scheme was not contributing to the goal to halve the employment gap by 2018.

There was great optimism in 2008 that the resources boom would generate a great deal of employment for Indigenous people; not long before the Global Financial Crisis the Australian government endorsed the Australian Employment Covenant that aimed to generate 50,000 jobs for Indigenous people initially within two years.

A rare correlation of all these factors saw a relatively successful scheme incrementally dismantled, first in non-remote Australia in 2006 (where it was argued by the employment portfolio that there was excess demand for labour), and then for remote Australia. Initially the CDEP scheme was abolished in the Northern Territory in 2007 as a part of the Northern Territory Emergency Response Intervention. CDEP was reinstated for a short time in the Northern Territory and then as part of wider reforms from 2009 divided into two streams (community development and employment and training) and two categories of participants (those grandfathered on wages and categorised as employed and those who were only eligible for welfare payments and categorised as unemployed). These divisions made little sense, especially to participants and administering organisations.

In 2013, in its dying days the Gillard government introduced RJCP to 60 remote regions with service providers selected on a competitive basis. This saw 20 for-profit providers gaining five year contracts with just four securing contracts for 20 regions; there were between 35,000 and 37,000 participants. Those grandfathered on CDEP now numbering about 4,000 were to be retained on wages until mid-2017, while all others judged to have full-time work capacity were required to participate in some form of activity for around 20 hours a week—training, or work-for-the-dole activities, or referral to other services like drug and alcohol counselling—to receive welfare payments.

Just 18 months later the Abbott government changed the RJCP into the CDP—a reform process that I termed ‘incoherent and inadequate’ when announced in December 2014. This is mainly because having labelled RJCP as disconnected from the unique social and labour market conditions of remote Australia, an even more disconnected and draconian regime was proposed that would require 30,000 participants aged 18–49 years to work 5 hours a day 5 days a week for their dole at pay well below award rates.

As a part of this reform processes the commitment to grandfather existing CDEP participants to 1 July 2017 was dishonoured and foreshortened to 1 July 2015; this decision was based on recommendations in the 2014 Forrest review of Indigenous jobs and training (*Creating Parity*) that called for hastening the abolition of CDEP on equity grounds (CDEP waged participants were earning more than those on RJCP working for the dole) even

though it acknowledged there were some advantages in the payment of CDEP wages over unemployment benefits.

Remote employment services were relabelled CDP on 1 July 2015 even as a different form of CDP, what could be defined as 'CDP Mark 2' was being developed. To simplify, let me differentiate between CDP1 that has operated since 1 July 2015 and CDP2, the subject of this Inquiry that seeks amendment to the Social Security Act to allow it to begin on 1 July 2016.

In launching CDP1 on 3 June 2015 Senator Scullion's media release was titled 'Remote employment programme to improve communities'. Like Jenny Macklin's CDEP of 2009 this was to be a program with two aims: to ensure that unemployed people engaged in meaningful activities to make their communities better places to live; and to put job seekers on a pathway to real jobs. Paradoxically, while using the acronym CDP to refer back to CDEP, the E for Employment has been eliminated so that the program sounds as if it is primarily about community development.

In launching the proposed CDP2 reforms just six months later with a media release 'CDP reforms to drive employment outcomes' and also in the Second Reading Speech when the CDP Bill was tabled (both dated 2 December 2015), the Minister suggests that CDP1 has already been a success—with success being measured by an increase of placement into 'work-like' activities by 50 per cent over the number placed in activities before the reform, not the achievement of full-time employment, so-called 'real jobs'. At the same time it is noted in the Second Reading Speech and Explanatory Memorandum that the CDP caseload which represents only 5 per cent of all job seekers accounts for over 60 per cent of all reported No Show No Pay 'failures' or penalised breaches.

Before turning to look at the specifics of what is being proposed in CDP2, the CDP Bill, I want to make some over-arching observations.

In the post-ATSIC period since 2004, Australian governments have become used to tampering with Indigenous-specific institutions like CDEP irrespective of the consequences. And governments have also become used to 'experimenting' without any real accountability if experiments work or not, owing to the limited political power of Indigenous people living remotely. Such rapid fire change in program architecture is not just expensive, but inevitably makes it difficult if not impossible for the supposed beneficiaries of such reform to understand what is going on, and why compliance rules are constantly being changed by outsiders. Such rapid change also makes prospects for sensible program evaluation extremely difficult.

One big experimental goal that has been around for three decades now, to eliminate the disparity between Indigenous and non-Indigenous employment outcomes, is failing spectacularly. This goal was first articulated by the Hawke government in 1986 in the aftermath of the Miller Inquiry into Aboriginal Employment and Training Programs (1985) and was incorporated as an outcomes measure in the Aboriginal Employment Development Policy in 1987. It was re-articulated by the Rudd government in 2008 although the earlier failed target was reduced to half closing the employment gap, which is to reduce rather than eliminate employment disparity.

Report after report since 2008 when the Rudd government invented this target has shown that this gap is not closing. The latest report from the Productivity Commission to COAG



(*National Indigenous Reform Agreement Performance Assessment 2013–14*) released to the public on 2 December 2015, on the very day that Minister Scullion was tabling the CDP Bill, shows using official statistics that not only is the employment gap not closing, it is widening, and it might not close in the foreseeable future. The Productivity Commission makes this assessment using the latest available comparative employment data for 2012–13. It shows a massive 38 percentage point disparity in employment outcomes between Indigenous and other Australians in very remote Australia and provides a compelling case that since 2012–13 this situation might have worsened owing to the abolition of CDEP and structural, cyclical and geographic factors that I will return to below.

While the Productivity Commission recommends rationalisation of extensive and overlapping reporting on Indigenous outcomes and disadvantage, it is telling that in late 2015 it is limited to using 2012–13 information on comparative labour force outcomes. Similarly it is noteworthy that the Department of Employment reports Labour Market Assistance Outcomes (LMAO) on a regular basis for all programs except RJCP/CDP for which no employment or other data are released systematically (see <https://www.employment.gov.au/labour-market-assistance-outcomes-reports> ).

In my view there is a need for far more regular and transparent reporting on the Indigenous employment situation as occurred for a time with the annual Labour Force Survey with an Indigenous identifier to 2011 and should occur with LMAO.

More importantly the Productivity Commission calls for a much greater emphasis on policy evaluation: knowing what works and why, is recommended as the key to designing policies that achieve positive outcomes. Yet one senses that there is a spiralling cycle of more and more policy and program change as one government after another blames predecessors for an inability to make any inroads on employment and wealth disparities. While not saying so explicitly, it is almost as if given the particularities of remote Indigenous Australia we are using the wrong instruments (official statistics) to measure the wrong metric (the level of mainstream employment rather than quality of livelihood and wellbeing). The very rapidity of change leaves no time for proper evaluation of success or failure; this provides policy space for governments to make risky proposals for experimental change such as those in the CDP Bill.

### **The latest proposal for an experimental CDP system**

Even as the Abbott government reformed RJCP into CDP in 2015 the need for further reforms were identified. In his Second Reading Speech Senator Scullion refers to what he terms problems of two broad forms, one set linked to compliance arrangements, the other to the taking up of any available work. And so a new set of experimental arrangements are proposed for trial that will place up to 2,000 participants outside the national compliance system and subject them to a new 'remote income support payments' regime in four 'remote income support regions' selected by the Minister.

Senator Scullion refers to compliance arrangements failing providers and their communities, but it is actually the participants who are being breached that the arrangements are failing most as they lose income. According to the Minister this is in part due to the national compliance framework being designed to re-engage job seekers in non-remote Australia in their mutual obligations and this system being less effective when applied in remote Australia.

What the Minister seems to be overlooking here is that this was his very complaint with the RJCP that ‘failed local communities because it wasn’t geared to the unique social and labour market circumstances of remote communities’ (Media release 6 December 2014), a failure that he set out to redress just over a year ago with CDP.

Analysis by Lisa Fowkes from the ANU provided to this Inquiry (submission 1) shows soaring breach rates up to the introduction of CDP. Since then no official data have been released except for the startling statistics in the Explanatory Memorandum. Arguably given the intention to use breaching as a financial stick to ensure compliance, the CDP framework is not less effective but too effective when applied in remote Australia: many participants seem to be more willing to embrace breaching than embrace mutual obligation work-for-the-dole activities with the regularity and intensity of the five-hours-a-day, five-days-a-week that is now required.

While providers and the Department of Human Services have proven themselves willing to apply breaching at ever increasing rates, there is no evidence that this has led to any change in job seeker ‘behaviour’. Instead it has seen more people losing income support payments with reports from some providers that many are deciding to disengage from employment assistance altogether.

The proposed solution to the extraordinary levels of breaching—at 12 times the national rate as reported in the Explanatory Memorandum—is to make the link between attending activities and receiving income support more immediate and clearer on the assumption that it is lack of clarity not dissatisfaction with CDP requirements that is the issue. This will be done by devolving responsibility for administering the payments and a new compliance regime to locally-based CDP providers. It is anticipated that a combination of greater knowledge of local circumstances and personalities and a stronger link between the occurrences of ‘no show’ with the imposition of ‘no pay’ (reduced in terms of time lag from five weeks to one week) will reduce breach rates and conversely improve engagement. Indeed the Explanatory Memorandum (p. 8) suggests that flexible arrangements will be introduced allowing providers to implement attendance monitoring and pay adjustment to the hour ‘hence lessening the financial burden [of non-compliance] on the job seeker while maintaining the behavioural impact’.

An important element of the changed arrangements for the new remote income support payments is that they will be made weekly rather than the standard fortnightly so as to both provide the means to immediately experience the impact of non-compliance and to assist families with budgeting. The Explanatory Memorandum (pp. 6–7) refers to a ‘flood and famine’ cycle whereby income can vary significantly from fortnight to fortnight; it is suggested that this can make budgeting harder, leading to disputes and violence. It is noted that ‘in very remote Australia hospitalisation rates from assault are 15 times higher than in major cities’. In so far as an attempt is made to causally link the 15 times higher hospitalisation rate to the 12 times higher breach rate, a reduction in breaching should result in a reduction in hospitalisation.

The proposed solution to an apparent reluctance to take up available work in remote communities is to set new income thresholds. This proposal is looking to replicate one of the unique features of the CDEP scheme that saw a high proportion of participants work more than 15 hours a week: initially CDEP operated without any income threshold whatsoever, although over time this was reduced to a limit set by the national minimum wage. While

there were variations, in general participants in the CDEP scheme worked a base 15 hours paid at award rates and could then earn what was widely referred to as 'top up' from extra hours worked either in waged employment or in self-employment most clearly evident in the production of art for sale. As an example, analysis of data from the National Aboriginal and Torres Strait Islander Social Survey 2002 that I undertook with colleagues Matthew Gray and Robert Levitus showed that in remote and very remote Australia, CDEP participants earned an average \$100 more per week than the unemployed and that 89 per cent worked more than the minimum required 15 hours per week.

Under current CDP arrangements participants are paid Newstart Allowance for 25 hours participation per week, with this income support payment being reduced (tapering down) if more than \$52 per week is earned from additional work. The new proposal will allow eligible CDP participants to earn up to \$650 a week before the income taper starts to reduce their base remote income support payment. It is foreseen that these new income thresholds will drive up employment through the reduction, but not the elimination of what economists call 'poverty traps'.

While the new arrangements propose a greater role for community-based providers in administering CDP, they also propose a new and unusually direct role for the Minister in two broad areas.

First, the Minister will determine, by legislative instrument, the remote income support regions in which these measures will operate. In making this determination a set of criteria are outlined in the Explanatory Memorandum (such as social and economic disadvantage as measured by unemployment levels, welfare dependence and education), but in the CDP Bill any other criteria is allowed. It is also anticipated that phase in, initially to four regions, will occur on the basis of community and provider willingness and readiness to participate. What is not clear is on which of these many criteria regions will be selected and whether the most or least disadvantaged will be targeted for trials.

It is also proposed that the trials are conducted by locally-based providers 'who know and understand the job seeker and the community' (EM, p. 8) which suggests that selection will be limited to four of the 27 regions where Indigenous not-for-profit organisations currently operate, rather than say the 20 where private for-profit organisations operate (the balance is made up of non-Indigenous not-for-profits, local governments and joint ventures).

Second, it is proposed that participation in a broad range of activities that are useful to the community and job seekers will constitute compliance with activity requirements. However, it will be the Minister—not the community or provider—who will determine what constitutes eligible activities although provision is made for consultation (EM, pp. 7–8).

### **Conceptual and technical shortcomings in the CDP Bill**

It is my view that the CDP Bill's proposed experimental system is likely to further exacerbate the problems identified in both the earlier RJCP and the current CDP that need urgent remedial action. This is due to an apparent inability of policy makers to properly conceptualise the challenge of delivering a workable labour market program in remote Indigenous Australia. This is apparent in three broad areas.

First, those making policy appear to fundamentally misunderstand the nature of labour markets in remote Australia, especially in situations where the majority of the population is Indigenous.

Second, there is a tenacious adherence to a model that looks to use financial incentives and disincentives, reward and punishment, to modify the behaviour of individuals to better suit mainstream labour markets, despite evidence that such an approach is failing.

Finally in looking to re-introduce elements of the CDEP scheme, those who have devised the CDP Bill either do not understand or are wilfully ignoring how the scheme operated.

I want to say something about these three conceptual shortcomings before highlighting the unworkability of a series of proposed technical solutions in the CDP Bill.

Both ministerial statements and the Explanatory Memorandum cling to the view that the ultimate and utopian solution to the development challenges facing remote Indigenous communities is full-time employment for all, in private and public sector jobs and in commercially-viable businesses. While the 60 remote regions spread across much of continental Australia are diverse, most lack a productive market-oriented component. That is, they are unusual service regions supported by the public sector and transfer payments and productive engagement with market capitalism is limited. This means the goal of orienting all surplus labour to eventual engagement with market capitalism is inappropriate as the conceptual frame for employment programs. What is more appropriate is a shift to considering community development activities as productive in and of themselves, rather than as a pathway to imagined mainstream employment for all residents of these regions.

The extent of the misframing of the challenge is starkly highlighted by the Productivity Commission in its performance assessment 2013–14 of the National Indigenous Reform Agreement.

As already noted, using official data from 2012–13 the Productivity Commission shows that employment gaps are greatest in remote Australia and likely to grow. The Commission focuses on what economists term the demand-side—the demand for labour is far too low to absorb the supply of labour. A major cause of this mismatch is what it terms geographic influences, or remoteness; Indigenous people live in remote regions away from concentrations of mainstream economic activity (setting aside the issue of low Indigenous employment rates in non-remote Australia) because of colonial history and contemporary ownership under Australian law of their ancestral lands.

According to the Commission the employment consequences of this locational reality are likely to be exacerbated in the immediate future by two factors: structural employment changes and a downturn in the business cycle.

The former will see a growing demand for highly skilled workers especially in professional and managerial roles and a declining demand for low skilled work. This not only disadvantages Indigenous people but also sees such jobs in remote Australia increasingly occupied by non-Indigenous people, as well as Indigenous, people from outside. And so we see the highest levels of Indigenous *unemployment* alongside the highest levels of non-Indigenous *employment*, with non-Indigenous people moving to remote regions for jobs. Populist pleas for all local jobs to go to local people articulated by influential Indigenous political actors like Warren Mundine and academics like Marcia Langton overlook this structural reality.

The latter recognises the fluctuating macroeconomic environment and its impact on demand for labour. As the resources boom ends and Australia's long period of economic growth stalls, remote Indigenous Australia is vulnerable to a decline in demand for labour

especially in the mining sector—where many Indigenous workers have been recently employed and are likely to be the first dismissed. While mining work has not made much of an overall impact on employment levels in remote Indigenous Australia, any loss of private sector work will have economic repercussions.

The Productivity Commission's assessment is realistic, but it is not new or even comprehensive as it does not include cultural or historical factors in its analysis. But as it originates from an independent body charged with advising the Australian government it might prove influential with time.

In the present, it marks a total disconnect from the government's aspirational goals to reduce employment disparity even as it is expanding; and from the underlying aspirational rationale of the CDP Bill to either shift Indigenous people to full-time mainstream employment or to modify their behaviour to ensure that they are properly trained and disciplined subjects ready to take up imagined jobs when they emerge.

I will not focus too much on the behavioural model that has become central to the operations of Australian mutual obligation welfare to work programs except to note that it is clearly not working, as demonstrated by the government's own statistics on breaching. In many situations this is because if the state withdraws the safety net as punishment/disincentive there is another more reliable safety net of familial care that operates.

Mixing up correlation with causality the Explanatory Memorandum looks to link high welfare dependence with community and family dysfunction; and it then identifies fluctuating family income due to breaching as exacerbating the problem. If that is truly the case then it might be sensible to eliminate a system that puts basic subsistence at risk when people fail to meet centrally-determined program requirements that have not been negotiated with them and that they frequently do not understand. This is especially the case in situations where people had been participating in the CDEP scheme for decades.

Focusing on the modifying the behaviour of individuals who are unemployed as the elixir to the limited demand for labour in remote regions identified by the Productivity Commission seems to me to unduly focus on individual agency over complex structural issues. It also fails to consider if the assumptions underpinning the deployment of such a system—inspired by a governmental interpretation of western behavioural psychology and economics—is applicable in the Indigenous context. Richard Thaler's latest book *Misbehaving: The Making of Behavioural Economics* (2015) seeks to clarify that behavioural models are not about human beings being rational automatons but rather inclined to behave unpredictably. The systems being implemented and proposed are simplistically assuming forms of western rationality whereas responses especially in cross-cultural contexts, often deviate from such expectations.

The new proposal seems to have overlooked key features of CDEP scheme success that are apparently informing elements of the new CDP Bill.

First, it was community organisations who decided what constitutes work and how myriad versions of the 'no work, no pay' (now 'no show, no pay') rule would work. Indeed in some situations like at outstations, CDEP wages were paid as a guaranteed basic income on the assumption that people worked at least 15 hours a week to survive—such payments constituted a local form of safety net for participants.

Second, while CDEP participation was initially community-wide, it developed into a voluntary opt-in program and there was no requirement that CDEP organisations employ all working-age people in the community, while people with disabilities, caring responsibilities and other health problems could be paid by Centrelink. But all work under CDEP from one hour up was at award rates and all participants were classified as employed not unemployed. This eliminated the opprobrium and indignity of employing people at discriminatory and unacceptable below-award rates and the opprobrium of being constantly referred to in dominant national narratives as unemployed and undeserving.

Third, community-control and the linking of administrative and capital resourcing on a formula basis to the number of participants gave CDEP organisations a degree of autonomy, flexibility and enhanced capacity. Furthermore if the application of locally-implemented 'no work, no pay' rules resulted in a local surplus of CDEP scheme funds these could be redeployed to generate more jobs and enterprise.

A combination of these features meant that CDEP scheme funding facilitated the maximisation of expenditure within communities generating local multiplier effects. This is in marked contrast to current processes of breaching that are not just reducing the income available to already impoverished families and individuals but are also reducing community income and so jeopardising the viability of often marginal local commercial and social enterprises. It needs to be emphasised also that as breaching reduces total income flow into communities this loss of income further reduces local employment and development opportunities and increases poverty.

Instead of properly addressing structural challenges and properly implementing positive features of the CDEP scheme, the CDP Bill looks for technical solutions to what are wrongly identified as technical design problems and perpetuates misguided and paternalistic attempts to modify the behaviour of individuals deemed to challenge norms that they might not recognise or observe. Even at face value many of these proposed solutions appear likely to fail owing to convoluted design logic or else they raise more questions than they answer.

Let me cluster my specific criticisms under three broad headings borrowing from the Bill's supporting documentation: improved job seeker compliance arrangements, new income thresholds to drive employment and new ministerial oversighting.

#### *Improved job seeker compliance arrangements*

It is argued by the Minister that the CDP Bill will simplify compliance arrangements for remote income support recipients, but it is difficult to see how this will happen. For a start the new category 'remote income support recipient' will be created and treated differently from other recipients of welfare. And while monitoring will be devolved to community-based providers in remote income support regions, they will also be charged with the burdensome task of panoptic micro-management of participation to the hour rather than to the day. So in the name of a simplified regulatory regime, providers will actually be entrusted with a more complicated regulatory framework. Each provider will be monitoring an average 500 job seekers not just for their participation for remote income support payments (25 hours by the hour per week for Newstart equivalent payments) but also for their movements between regions and for a complex set of acceptable reasons (like ceremony leave) for non-attendance. While in theory any additional work that a job seeker might undertake will be reportable to the Department of Human Services by the employer,

in reality it is likely that locally-based providers will be asked to manage interactions between job seekers and employers.

Some providers have already raised concerns they are spending so long on compliance that they do not have the time or resources to deliver quality activities and/or seek out employment opportunities by developing relationships with employers. The proposed regulatory regime will further divert scarce resources and provider capacity from the task of developing activities that are valued and desired by job seekers to excessive monitoring of 'no show, no pay' rules down to the hour. At the same time an incentive is created to penalise 'no show' because it is proposed that a community investment fund be established that will allow funds withheld as a result of penalties to be put back into communities to assist local economic and community development initiatives (EM, p. 9). This will be delivered for some unspecified reason through the Commonwealth Indigenous Advancement Strategy whose grant-making activities have been heavily criticised and are the subject of another Senate Inquiry due to report on 3 March 2016.

This framework creates a number of moral hazards for providers. At present the fees paid by government are dependent on taking action against people who do not show up, even if they believe that this is counter to the interest of the individual, already a moral issue. To what extent will they implement a regulatory framework that will result in greatly enhanced workload? How do they balance the need for locally-determined regulation with the external regulatory demands that will inevitably arise; or with the creation of locally valued forms of work? The risk is that with greater administrative and compliance workloads, providers will be less rather than more able to support positive outcomes for participants, both in terms of productive CDP activities and engagement in paid work.

#### *New income thresholds to drive employment*

In his Second Reading speech Minister Scullion notes that he is frequently reminded by both community leaders and job providers of the positive elements of the CDEP scheme. One of these elements was that CDEP scheme participants could earn additional income up to an amount approximating the national minimum wage without losing their 15 hour CDEP base payment (roughly equivalent to their income support entitlement). For the participant the base payment was a safety net from which additional work could be undertaken on a flexible basis as determined by seasonal factors, ceremonial commitment, family responsibilities or personal health status. The beauty of the way that the CDEP scheme dealt with additional income was its simplicity, the problem was that once an amount above the national minimum wage was earned all CDEP scheme payments were foregone and participants were deemed to have exited the scheme. This could be problematic for those like artists, who had fluctuating annual incomes.

The CDP Bill's attempt to replicate this arrangement is convoluted and complex, indeed in an effort to eliminate one poverty trap, another is created. The new proposal as I understand it is that after working 25 hours for their remote income support payment, job seekers will be at liberty to work extra hours part-time or casually or in self-employment with no loss of income support payment. However, if they do not work the requisite 25 hours per week for their income support payment (Newstart) some of their base payment will be docked. The new proposal will suit those who want to work 25 hours per week for the dole (at about \$10 per hour) and then work additional hours at award rates. But it will not suit those who only want to work part time or those who want to work at award rates—for them there will be a trade-off that constitutes a new form of poverty trap.

Part of the solution to this newly-proposed poverty trap is to treat remote job seekers as citizens rather than denizens (second class citizens) and pay their remote income support payment at award rates, as under the CDEP scheme, for 15 hours a week.

Another, as already noted, will be to discontinue the narrative of utopian full employment at places where there are few or no jobs. People will not be coerced or incentivated into jobs that are non-existent, but as CDEP success showed they will take up both jobs and activities that align with their aspirations if they have the potential to work for local organisations and to negotiate the nature of the work. Both allowed people their dignity.

Importantly, the stipulation that all abled-bodied individuals work 25 hours a week is likely to flood local labour markets with workers whose 'wages' will be paid by the Australian government at below award rates. In some situations this will result in fewer employment opportunities as employers cash in on a source of labour that is free for them. In other situations it appears that people will not work for below-award rates and so alongside high Indigenous unemployment one sees the importation of contract workers and backpackers who take up local jobs at award rates and work long hours for a limited time: they work, hard, save a lot, and contribute little to community economies.

The CDP Bill looks to address a problem with both RJCP, and now CDP, that job seekers have no incentive to work more than about three extra hours per week before the social security taper bites and effectively taxes their extra income at more than 50 cents in the dollar. But it does this in a flawed manner that cannot be compared with the CDEP scheme where many people were better off than under the current proposal. Just as RJCP failed in comparison with the CDEP scheme so will CDP, both as currently configured and as proposed in the CDP Bill. It is proposed to entrench a system where remote-living people must engage in 'work-like' activities 25 hours for the dole, more hours than other Australian citizens, for an amount well below minimum wages.

#### *New ministerial oversighting in the name of community empowerment*

A key feature of the CDEP scheme was community-control. A stylised CDEP organisation had an Indigenous board of directors who, in collaboration with management, established the policies and regulatory framework for operations. CDEP scheme participants were generally the members of these organisations.

The CDP Bill is looking to enhance such localisation and community engagement with the selection of community-based providers in income support regions. But it seems that in the name of community empowerment enhanced ministerial and bureaucratic oversighting is being proposed.

For a start it will be the Minister who selects the trial regions although it is unclear, as noted above, if he will select those with the most or the least well developed labour markets. Ministers too face moral hazard and adverse selection challenges. Outcomes might be most forthcoming in the regions with greatest opportunity, but need and equity considerations might suggest that those worst off should be selected.

In any case it is obvious that given the diversity across the 60 regions it is important to know the nature of job seeker aspirations and skills and the employment as well as non-employment (Informal or non-market) work possibilities in each. An instrument, the Community Action Plan, was initially established as an element of CDEP reform in 2009 to assess prospects community-by-community, and then as an element of RJCP but it proved



inadequate—plans were produced to pro forma templates, lacked credible local information and were not genuinely community driven. This mechanism was abolished by Senator Scullion in December 2014.

One of the crucial roles played by CDEP scheme organisations was to develop business plans in consultations with participants that would determine what constituted CDEP work to be remunerated and in what circumstances. This provided a high degree of flexibility to accommodate a diversity of local aspirations and priorities. Such local planning is essential. In the CDP Bill it is proposed that the Minister will determine the broad range of activities that people can participate in to meet their activity requirements. This power not only flies in the face of community empowerment, but gives excessive control power to the Minister without appropriate checks and balances.

### **Recommendations**

There are two positive aspects to the CDP Bill and its scrutiny by the current Senate Inquiry. First, after boldly reforming the RJCP with the CDP in late 2014, the messaging around the need for further reform is that the employment programs that have mainly replaced the CDEP scheme, but also the provision of employment services more generally in remote Australia, are failing. As the Productivity Commission has shown they are certainly failing to reduce any disparity between Indigenous and non-Indigenous employment levels; and they are failing the establishment of alternate economies for livelihood and wellbeing in remote Australia.

Second, the CDP Bill makes it clear that there is a need for a community development and employment program tailored for remote (Indigenous) Australia that sits outside the social security system that is devised for the majority of jobseekers who live in non-remote Australia. These are the unique social and labour market conditions of remote Australia that Senator Scullion referred to in December 2014.

Given such recognitions, how is it that the Australian government's policy making machinery produced a proposal for trial that is so inadequate? One possibility noted by the National Commission of Audit in 2014 is that those charged with developing policy within the Department of Prime Minister and Cabinet lack the capacity and grounding in remote Australia for the task on hand. Another possibility is that the bureaucratic machinery located close to the Prime Minister is too keen to serve him rather than provide the frank and fearless advice needed to develop realistic programs that might not close statistical gaps but might better serve those looking to eke out some form of livelihood in remote Indigenous Australia.

I end by providing a set of just five recommendations that will chart a possible way forward that can reduce the likelihood of yet another expensive failure in experimental Indigenous policy for remote Australia.

- 1 The CDP Bill should be withdrawn in its entirety and sent back to the Department of Prime Minister and Cabinet to do some serious policy work in accord with the purported government objective, as articulated by Minister Scullion, of revisiting some of the positive features of the CDEP scheme. In accord with the call by the Productivity Commission for a change of approach, this exercise should be based on a far greater emphasis on policy evaluation available in a significant body of research over many

- years about what worked and why in the now abolished CDEP scheme; and an honest and transparent consideration of what is working, or not, in the current CDP.
- 2 If the government is committed to some employment program trials and continued experimentation then this should be undertaken to a coherent framework that is not as riven with contradictions and unworkable proposals as the current CDP Bill. One straightforward possibility would be for the Australian government and its machinery to properly consider the proposal for a revamped CDEP scheme in the Community Employment and Enterprise Development Scheme (CEEDS) model developed by the Aboriginal Peak Organisations of the Northern Territory in 2011. All the hard policy work has been done for government in this proposal that has not, as yet, been properly considered.
  - 3 An avenue for innovative experimentation is to engage with global thinking and some carefully evaluated trials of unconditional basic income schemes. There is an emerging body of research by internationally recognised thought leaders like Guy Standing (*A Precariat Charter: From Denizens to Citizens*, 2014) and James Ferguson (*Give a Man a Fish: Reflections on the New Politics of Distribution*, 2015) that in situations of extreme labour surplus empowering income support programs are far more productive than punitive workfare.
  - 4 A nation whose leadership has recently committed almost *ad nauseam* to 'innovation' should also seek innovation in complex areas of employment and social policy. As reluctant as I am to propose yet more experimentation it is sorely needed given the failure of the current policy framework to deliver either jobs or improved livelihood and wellbeing. However, any experimentation be it a proper return to the CDEP scheme and/or a basic income scheme, must include transparent governance mechanisms that give local organisations and participants voice; and they must be properly evaluated to performance criteria that are stipulated both by participants and the government; that is, in two-way performance evaluation.
  - 5 Finally, given the reference in the CDP Bill to the Indigenous Advancement Strategy playing a role in the delivery of a new community investment fund, it seems appropriate that the finalisation of this Committee's report is delayed until the report by the Finance and Public Administration References Committee on the Commonwealth Indigenous Advancement Strategy Tendering Processes is available on 3 March 2016.