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North Australian Aboriginal Justice Agency

Real Jobs and Fair Pay for Remote Communities: Submission on the Social Security Legislation Amendment (Remote Engagement Program) Bill 2021

20 September 2021

North Australian Aboriginal Justice Agency

The North Australian Aboriginal Justice Agency (**NAAJA**) and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since 1974. NAAJA frequently travels to remote communities across the Northern Territory to deliver civil and criminal legal services, community legal education, post prisoner release support, and to conduct consultation on policy issues impacting the lives of people living in remote communities, including remote employment programs.

NAAJA lawyers have worked with and represented many clients impacted by remote employment and social security programs, from CDEP to the Remote Jobs and Communities Program and more recently the Community Development Program.

Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations. The Centre has worked for many years in collaboration with Aboriginal community-controlled organisations based in the Northern Territory to advocate for economic justice, including NAAJA and the Aboriginal Peak Organisations Northern Territory.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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1. Executive summary

The North Australian Aboriginal Justice Agency (**NAAJA**) and the Human Rights Law Centre (**HRLC**) welcome the opportunity to contribute to the Senate Finance and Public Administration Legislation Committee's inquiry into the Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 (the **Bill**). We note that we engaged with Aboriginal Peak Organisations NT (of which NAAJA is a member) and the Coalition of Peaks before drafting this submission.

From the outset it is important to highlight that Aboriginal and Torres Strait Islander people have articulated clear proposals for creating jobs and promoting positive social and economic development in remote communities. A key example is the [Fair Work Strong Communities](#) proposal led by Aboriginal Peak Organisations Northern Territory (**APO NT**) and endorsed by 40 organisations across Australia.

Such proposals recognise that a key driver of unemployment and poverty in remote communities is the lack of jobs and community control, which in turn forces people onto social security and into discriminatory and disempowering government programs, such as the Federal Government's Community Development Program (**CDP**). Time and time again, government programs fail remote communities because they ignore the sovereignty, vision and expertise of Aboriginal and Torres Strait Islander people in favour of top-down, paternalistic policies.

The decision to finally end of the disastrous CDP is welcome, along with the Federal Government's stated commitment to co-designing pilot programs followed by a new national program to replace CDP. It offers an important opportunity for reform.

The Bill currently before the Committee appears to have good intentions. However, it risks wasting this opportunity for reform because it pushes a model of conditional welfare, instead of one focused on properly paid work.

NAAJA and HRLC recommend that the Committee **oppose this Bill** for two key reasons:

1. The Bill dishonours the Federal Government's commitment to formal partnerships and shared decision-making in the National Agreement on Closing the Gap. The introduction of the Bill itself demonstrates a concerning lack of commitment to partnership – we understand that key organisations, such as the Coalition of Peaks and APO NT, only learnt about the Bill when it was tabled in Parliament. While co-design is referred to in the Explanatory Memorandum, the Bill does not itself guarantee a co-design process for the pilot programs or future national framework.
2. The Bill would pre-determine a welfare-based framework for the pilot programs, with payment of a small supplement for at least 15 hours of "work-like activities" per week. It is not a framework for proper jobs and wages, as proposed by the *Fair Work Strong Communities* model. If people are working, they should be employed and receive all the normal protections and benefits of employment. Anything less risks undervaluing the labour of First Nations peoples in remote communities and repeating wage injustices of the past.

NAAJA and HRLC also endorse the submission of APO NT. We reiterate APO NT's calls for the Federal Government to engage with it and the Coalition of Peaks to develop a formal partnership to co-design the framework that will replace CDP.

2. The Bill pre-determines a work-for-the-dole framework

The Bill is described as providing a legislative framework for piloting new employment programs to replace CDP. NAAJA and HRLC welcome the Government's decision to end the compulsory work-for-the-dole aspect of CDP in May this year, together with the commitment to co-design the pilot programs and the new national framework to completely replace CDP by 2023.

CDP has had a devastating impact on many remote Aboriginal and Torres Strait Islander communities. The centrepiece of CDP was a compulsory work-for-the-dole program, accompanied by an oppressive system of

financial penalties, that discriminated against Aboriginal and Torres Strait Islander peoples in remote communities, forced people to work for much less than the minimum wage, reduced the number of paid jobs available, and saw many families left without money for food and other essentials. An evaluation in 2019 documented numerous adverse consequences of CDP and the financial penalties regime, such as increased rates of financial hardship, family violence, poverty-driven offending, physical health problems, mental health problems and feelings of shame or embarrassment.¹ A 2017 inquiry by the Senate Committee on Finance and Public Administration into the appropriateness and effectiveness of the CDP found that the program at that time should not continue.² Poverty rates in remote communities have increased in recent years,³ and the gap in employment rates between Indigenous and non-Indigenous peoples in remote communities is unacceptable.⁴

First Nations community leaders and representative organisations have repeatedly drawn attention to the harms of CDP and put forward proposals to reduce poverty. The end of the CDP is an important and positive step. It is imperative that Aboriginal and Torres Strait Islander people are listened to and that the mistakes of CDP are not repeated as the new program is developed.

The format of the new pilot programs that this Bill underpins is crucial, as findings from these trials will inform the new national framework to replace CDP in 2023. The details of the pilot programs have not been announced and will be outlined in future legislative instruments and policy. However, the fundamental question of whether people are employed or locked into social security is being pre-determined through this Bill.

The Bill creates a social security supplement framework (that will expire on 1 July 2024) that requires people to work at least 15 hours per week, while expressly stating that participants are not to be considered employees. In this sense, the Bill creates another work-for-the-dole framework and is a missed opportunity to trial genuinely alternative approaches based on creating jobs and promoting the right to fair and just conditions of work. The framework established by the Bill, predicated on the concept of conditional welfare, thus risks repeating many of the mistakes of the CDP.

3. The Closing the Gap Agreement must be honoured

The Federal Government has committed to co-designing the program that will replace CDP with Aboriginal and Torres Strait Islander communities. Yet it does not appear that the Government engaged with key representative bodies, for example APO NT or the Coalition of Peaks, prior to the introduction of this legislation. NAAJA was not engaged prior to the introduction of the Bill despite its extensive experience representing people adversely affected by the legislative settings underpinning CDP and engagement in previous Senate inquiries concerning CDP.

The lack of engagement with key Aboriginal and Torres Strait Islander representatives in the development of this Bill contravenes the Federal Government's commitment to formal partnerships and shared decision-making in the National Agreement on Closing the Gap. Partnership and shared decision-making are Priority Reform One of the Agreement and fundamental to achieving the Closing the Gap targets.⁵ Partnership and shared decision-making are also crucial to the Government meeting its obligations under the *UN Declaration on the Rights of Indigenous Peoples*.

¹ Department of the Prime Minister and Cabinet and Winangali, *The many pathways of the Community Development Programme – Summary report of community voices and stakeholder perspectives from eight communities*, February 2019, <https://www.niaa.gov.au/sites/default/files/publications/cdp-report-many-pathways.pdf>.

² Senate Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)*, December 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report.

³ Francis Markham and Nicholas Biddle, *Income, poverty and inequality* (CAEPR 2016 Census Paper No 2, Centre for Aboriginal Economic Policy Research, Australian National University, 2018).

⁴ Department of the Prime Minister and Cabinet, *Closing the Gap Report 2020*, p 71, <https://ctgreport.niaa.gov.au/>.

⁵ Australian Governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, *National Agreement on Closing the Gap*, July 2020, pp 5 -8.

While the Government states that it will engage in co-design at a local level in relation to the pilot sites, this Bill sets the scene for welfare-based pilots only. At the very least, it does not create a legislative basis for an alternative approach. Whether people are employed or kept on social security is a crucial question, with significant implications for the rights of people in remote communities to fair and just conditions of work, to social security and to non-discrimination and equality. It is a question that should be approached through shared decision-making between the Federal Government and Aboriginal and Torres Strait Islander peoples, as required by the Closing the Gap Agreement. Given that this Bill will set the scene for the future national framework, the Government should have engaged broadly with Aboriginal and Torres Strait Islander peoples and representative organisations.

The Government's stated commitment to engage in co-design in relation to the pilot sites and a future national framework is not reassuring in light of the breach of trust that the abrupt introduction of this Bill represents. Significantly, co-design, partnership and shared decision-making in the development, implementation and evaluation of the pilot sites and the future national framework are not enshrined in the Bill at all.

4. Real jobs and fair wages are needed

4.1 No pathway to increased employment opportunities

A key target under the National Agreement on Closing the Gap is increasing the proportion of Aboriginal and Torres Strait Islander people aged 25-64 in employment to 62 per cent by the year 2031. The most recent data indicates the current proportion is 51 per cent - a decrease since 2006.⁶ First Nations employment rates are lowest in remote and very remote areas (as low as 35 per cent).⁷ Achieving this target requires the Federal Government to invest in job creation in remote communities, recognising that the central cause of unemployment is the lack of jobs.

While the Explanatory Memorandum speaks about creating pathways to finding jobs, it is difficult to see how the model proposed by the Bill will create employment opportunities for people in remote communities. The Explanatory Memorandum refers to "work like activities" and "activities or placements that are like having a job", in government services or community organisations. This suggests that people participating in this program will be doing work that they could be employed and receive a wage to do. This gives rise to a real risk that the proposed supplement model will, like CDP's work-for-the-dole program, displace actual jobs and disincentivise the creation of jobs because people will be doing work that an employer does not need to create a waged position for.

Participation in the program is described as voluntary, however, given the dearth of jobs in remote communities, many people will feel little option but to work for the supplement. This in turn raises the prospect of Aboriginal and Torres Strait Islander people's labour being undervalued and exploited again and risks adding to the pattern of wage injustice perpetrated against First Nations peoples since colonisation.

In addition, when jobs are displaced and people need to do activities in order to be paid a supplement, it creates the risk of people having their time wasted with unnecessary tasks as occurred under CDP. One of many examples reported to NAAJA was of five people being given the job of whipper-snipping in Gunbalanya, with only one whipper-snipper available to use.⁸

⁶ Productivity Commission, *Closing the Gap Annual Data Compilation Report July 2021*, p 51.

⁷ Department of the Prime Minister and Cabinet, *Closing the Gap Report 2020*, p 71, <https://ctgreport.niaa.gov.au/>.

⁸ This is just one of many examples that NAAJA was told about during its civil law clinics in remote Northern Territory communities.

4.2 No access to minimum industrial protections and work rights

The right to just and favourable conditions of work includes the right to fair wages and equal pay for work of equal value and the right to safe and healthy working conditions.⁹ However, the Bill states that people receiving the supplement to do work in government or community services will not be considered employees for the purposes of the *Fair Work Act 2009* or federal laws relating to occupational health and safety, workers compensation and superannuation.¹⁰ They will not therefore be entitled to the rights and protections that protect just and fair conditions of work.

Without the protections given to employees under the *Work Health and Safety Act 2011 and the Safety, Rehabilitation and Compensation Act 1988*, people undertaking ‘work-like’ placements in government and community organisations could be exposed to greater risk of workplace injury – there will be no obligation on organisations hosting a placement to comply with health and safety standards. Further, a person injured during a placement won’t have recourse to medical and rehabilitation assistance under the Commonwealth workers compensation scheme and will likely face the significant barriers to accessing healthcare that are a daily reality for First Nations people in remote communities.

The Explanatory Memorandum refers to the goal of paying “approximately equivalent to the minimum wage” for the 15-18 hours of work-like activities that participants undertake. The failure to guarantee payment of minimum wages is significant and was a key aspect of the exploitation and discrimination inherent in the CDP. Even if the supplement does equate to the basic minimum wage, people will still be worse off on the supplement than if they were employed to work 15-18 hours because if they were part-time employees, they would be able to claim partial payment of unemployment benefits, as well as being entitled to superannuation and other employee benefits. We refer to the submission of the APO NT for a detailed comparison of income rates for different scenarios.

As there is no indication to the contrary, it is assumed that the remote engagement supplement will be subject to compulsory income management. This means that while people are working for an additional payment, how they spend that money will be subject to control by the Federal Government. And, given people will remain on income support rather than in paid a wage, they will remain subject to aspects of the jobseeker compliance framework (while the work-like activities may be voluntary, other mutual obligations requirements remain compulsory).

While the intent behind the Bill appears genuine, it risks creating a model of disempowerment and difference. Ultimately, two classes of ‘worker’ will be created and may work alongside each other in a government or community organisation – one will receive a decent wage, superannuation, protections from workplace injury and have the freedom to spend their wage as they see fit and to potentially claim part-payment of social security benefits. The other will be working for a social security supplement and have none of those rights and protections.

4.3 Unequal access for people living with a disability or with care responsibilities

The Bill states that the supplement will be available to people on Jobseeker, Parenting Payment, Disability Support Pension or Youth Allowance who participate in a ‘placement’ for at least 15 hours per week (as well as meeting any other eligibility criteria determined by legislative instrument).

Significant numbers of people receiving these payments live with a disability, health condition or care responsibilities that make working at least 15 hours per week impossible. The Bill and Explanatory Memorandum give no indication as to what steps will be taken to ensure equal access to the pilot programs. As the Parliamentary Joint Committee on Human Rights has noted, “without the provision of reasonable accommodation and supports to ensure that the program placements are made available in a non-discriminatory way, for example by ensuring that work is open, inclusive and accessible to people with

⁹ *International Covenant on Economic, Social and Cultural Rights*, article 7.

¹⁰ Proposed new section 661F of the Bill.

disability, and appropriate childcare facilities are available for parents, there is a risk that, in practice, the payment may not necessarily be accessible to people with certain protected attributes.”¹¹

4.4 A better alternative

In committing the pilot programs to a welfare-based model, this Bill, if passed, would represent a missed opportunity to focus on supporting people into real jobs with fair and just conditions of work, and to share decision-making about key legislative provisions with Aboriginal and Torres Strait Islander representative organisations.

Aboriginal and Torres Strait Islander people and their organisations have continually asked for the Federal Government to work with them and invest in creating sustainable jobs in remote communities. The concepts of wage justice and self-determined social, cultural and economic development have been at the heart of calls to abolish CDP.¹²

40 organisations across Australia have endorsed the *Fair Work Strong Communities* proposal developed by APO NT (referred to at the start of this submission). The centrepiece of this proposal is addressing the lack of paid employment opportunities in remote communities, including by creating 12,000 jobs in community-controlled organisations and properly valuing the vital cultural, environmental, community and care work that is done every day in communities.

The HRLC and NAAJA both continue to endorse the *Fair Work Strong Communities* proposal and urge the Federal Government to work with APO NT as well as the Coalition of Peaks on the development of a new program and legislation to replace CDP.

5. Recommendations

1. The Committee should recommend that the Bill not be passed.
2. The Committee should recommend that the Government honour its commitment under the National Agreement on Closing the Gap to working in formal partnerships and sharing decision-making prior to the introduction of legislation that impacts the lives of Aboriginal and Torres Strait Islander people.
3. The Committee should recommend that the Government work in partnership with the Coalition of Peaks and APO NT to develop a formal partnership to co-design the framework that will replace CDP and to realise the potential of the *Fair Work Strong Communities* model.

¹¹ Commonwealth of Australia, Parliamentary Joint Committee on Human Rights, Human rights scrutiny report (Report 11 of 2021, 16 September 2021) [1.113].

¹² See for example, ABC News, *Fight for Indigenous workers' rights continues 51 years after Wave Hill walk off*, 26 August 2017, <https://www.abc.net.au/news/2017-08-26/finwa-on-fight-for-indigenous-workers-rights-and-end-to-cdp/8834502>; Central Land Council, *Submission to the Senate Finance and Public Administration Committee Inquiry into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)*, June 2017.