

**Submission
to
Inquiry into the Family Assistance and Other Legislation Amendment (2008 Budget
and Other Measures) Bill 2009
From National Welfare Rights Network
April 2009**

1. The National Welfare Rights Network

The National Welfare Rights Network (NWRN) is a network of 14 community legal centres throughout Australia which specialise in Social Security law and its administration by Centrelink. Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, and advocates for reforms to law, policy and administrative practice.

NWRN member organisations provide casework assistance to their clients in the form of information, advice, referral and representation. NWRN member organisations also conduct training and education for community workers and produce publications to help Social Security recipients understand the system and maximise their clients' entitlements.

In 2008, in conjunction with the National Association of Community Legal Centres, NWRN conducted a scoping study in the Northern Territory on the impacts of the social security aspects of the Northern Territory National Emergency Response (the NT NER) and prepared a submission to the Commonwealth Attorney General's Department. This resulted in a grant of \$0.5m for a Welfare Rights Outreach project in the Northern Territory for 12 months to address a wide range of "NT intervention, income quarantining and related Social Security issues".

Since September 2008, when the four Welfare Rights workers were placed in the two Aboriginal Legal Services in the Northern Territory, as part of the outreach project, NWRN has provided ongoing support to the workers through its NTER Project Subcommittee. This submission also draws on the experiences and findings gained through our ongoing involvement in this project.

2. Schedule 1 : Removal of Australian Taxation Office (ATO) from delivery of Family Tax Benefit (FTB) from 1 July 2009

The current Family Assistance scheme was introduced as part of the Government's introduction of A New Tax System from 1 July 2000. A key element of the new system was that it provided families with a choice of delivery mechanisms – either as direct payments or through the tax system and either in fortnightly instalments or as a lump sum. This was designed to improve accessibility for families through providing a wider range of avenues to claim their Family Tax Benefit (FTB) entitlements. One of the implications of this policy was that families should be able to receive the same entitlement regardless of which option they elected.

Experience to date however has demonstrated that a flaw existed in the current system because of the different assessment approach taken by the Australian Taxation Office (ATO) in the determination of a claim to that taken by Centrelink or Medicare. Self assessment rules apply to past period claims lodged through the ATO whereas claims made through Centrelink or Medicare are the subject of a decision making process. NWRN accepts that the Bill seeks to address this anomaly through removing the option of claiming FTB for a past period through the ATO whilst retaining the option of obtaining FTB for a past period through Centrelink or Medicare.

NWRN agrees that the differing approach to dealing with a FTB claim is an undesirable feature of the current system. NWRN is aware of instances where this inconsistency in the treatment of a FTB claim has led to inequitable outcomes. An example of this are shared care debts being raised which are later set aside because the claim lodged through the ATO has not been substantiated. We are also aware of cases where large FTB debts have been raised because the ATO has adopted a different understanding of "Australian Resident" to that provided for in the Family Assistance legislation. In our view, the advantages that will flow to the system through a consistent approach to the determination of a FTB claim irrespective of the method of lodgment outweighs any inconvenience that might be experienced by the very small proportion of the FTB population that currently utilise the ATO option which according to the Minister's Second Reading Speech is around 6%.

In NWRN's experience, claims made through the ATO were also unacceptably vulnerable to error due to the design of the ATO software package, which did not include a verification mechanism for the FTB claim part of the program. NWRN is aware of cases where incorrect ATO assessments stemming from the program design has resulted in families missing out on their full entitlements. The effect of the proposed amendments would also address the inherent disadvantages and uncertainties associated with the submission of claims through a package based self assessment system.

However, the NWRN would oppose any attempt to remove the option of making a past period claim through Centrelink or Medicare. This is an important option that can assist FTB recipients who are in a

position to elect to receive the payment on a yearly instead of fortnightly basis to avoid debts that might otherwise be incurred through incorrect income estimation or shared care disputes.

NWRN has no comment on the other proposed amendments in Schedule 1 of the Bill.

3. Schedule 2: Review of income management regime decisions

3.1 Access to External Appeal Rights long overdue

This proposed change will provide external appeal rights through the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT) not previously afforded in respect of decisions made under the Northern Territory Income Management category. These provisions, which are contained in Part 3B of the Social Security Administration Act 1999 (Cth) (SSA Act), were inserted by the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007.

In response to the Senate Legal and Constitutional Affairs Committee Inquiry into the NT NER, NWRN made the following comments in relation to the denial of external appeal rights:

“The right to appeal has always been a fundamental protection for Social Security recipients against bureaucratic neglect and error. However the Government intends to remove the rights to external appeal to the Social Security Appeals Tribunal (SSAT) for Northern Territorians who are subject to the Income Management of their welfare payments. This sets a very dangerous precedent to strip away this protection for an entire group of Australians based solely on where they live.....”

It is difficult to accept the Government’s rationale as to why Indigenous communities in the Northern Territory are to be denied access to independent review of decisions relating to the quarantining of welfare payments when other Australians in other parts of the country will be able to exercise their full appeal rights.

Of particular concern to Welfare Rights advocates is that the Government’s approach undermines efforts by Centrelink over recent years to improve the use of and awareness of the appeals system.”

Clearly, NWRN welcomes the proposed changes which are designed to remedy the current unacceptable restriction on review rights.

3.2 Further changes required

NWRN believes that the effectiveness of the proposed changes relating to appeal rights will be undermined unless deficiencies in the construction of the NT income management legislative provisions are not also addressed.

We highlight the following as examples:

- a. For the income management rules to apply (subject to exemptions), it requires that a person has been physically present in a Northern Territory area on or about 21 June 2007 which has been

declared under section 123TE of the SSA Act. Section 123TE sets out the matters which the Minister must have regard to in deciding whether to make such a decision, including the feasibility of making debits from income management accounts for potentially affected people in the area. However, section 123TE(6) provides that any failure to take into account the matters in subsection (5) does not affect the validity of the decision. So, whilst the proposed changes will now provide Social Security recipients with the right to challenge the determination that an area is a declared relevant Northern Territory area, it will have no practical benefit to the Indigenous person or their communities. This is worrying given our understanding that declarations have been made in remote communities where there is no FaHCSIA licensed store. This has caused significant hardship because the communities have been forced to incur substantial additional costs chartering flights to deliver food and other essential items purchased offsite using their income managed funds.

- b. The physical presence condition means that generally all people who are staying in a declared Northern Territory area are subject to the income management provisions. Limited exemptions are available under section 123UG of the SSA Act. What is notable however is that none of the criteria in section 123UG directly engage the central question in relation to income management, namely whether the person has a track record of appropriately managing their income so as to effectively provide for their children. Certainly the stated policy intent is to limit exemptions to people who have little real connection to the declared Northern Territory area. It remains unclear the extent to which this shortcoming could be remedied through the extension of external rights of appeal. There is also a real issue as to whether the jurisdiction of the SSAT or AAT would extend to reviewing decisions made by the Minister.

3.3 Ending the operation of the NT Income Management Category:

NWRN has previously expressed its opposition to the implementation of a compulsory income management regime on the grounds that it breaches well established principles of inalienability of entitlements enshrined in Social Security law. Additionally, NWRN has opposed the NT Income Management Category on the basis that it is racially discriminatory.

In our view, the blanket coverage of the NT Income Management Category on people living in declared Northern Territory areas and the lack of an evidence base to justify the scheme, represents an unreasonable and arbitrary interference on a person's right to Social Security benefits. NWRN is dismayed that this Bill has not adopted the recommendation that the NTER Review Board made on 13 October 2009 to end the current blanket application of compulsory income management in the Northern Territory.

4. Schedule 3: Community Development Employment Projects (CDEP) Scheme

4.1 The CDEP Proposal:

Schedule 3 to the Bill contains amendments to implement part of the Government's announced reforms to the CDEP program. These proposed amendments are intended to take effect from 1 July 2009.

The proposed changes will initially create 2 classes of CDEP participants. The amendments proposed seek to amend Part 3.15A of the Social Security Act to distinguish between new CDEP participants in the reformed CDEP from 1 July 2009 (who will receive income support) and continuing CDEP participants (who will receive CDEP wages from CDEP providers and, in certain circumstances, the CDEP Scheme Participant Supplement). The proposed amendments pave the way for continuing CDEP participants to receive CDEP wages from CDEP providers and the CDEP Scheme Participant Supplement until 30 June 2011, when continuing participants will transfer to income support. However we understand that the grandfathering for existing participants until 31 March 2010 is subject to allowable breaks of two weeks. We do not think that this time frame adequately takes into account family and other legitimate circumstances that may require a person to be away from work for a longer period. Given the significant loss of income a person will incur should they fall foul of this rule, we strongly urge that it is reviewed and at least aligned with the 12 week savings provisions which exist for Parenting Payment under the Welfare to Work changes.

These proposed amendments are intended to support a reformed CDEP program. We understand that the reformed CDEP program will include training, work readiness placements and a community development project component. The Government has also stated that the reforms will be supported by a Jobs Package to allow for conversions of CDEP positions involved in government service delivery to properly paid jobs both at the Commonwealth and Territory level.

4.2 Likelihood of adverse impacts too great to risk:

Whilst NWRN recognises that the CDEP program has enjoyed mixed success and some projects have problems, there are at least two major concerns with the Government's proposal:

- There is a real risk that taking Aboriginal people out of CDEP work schemes and placing them into the new Employment Services and Compliance Framework will result in many of them inevitably being caught by the Social Security penalty system. NWRN has previously placed on the record its concerns that the extraordinarily complex new penalty system is likely to cause significant problems for non-Indigenous job seekers, so it can hardly be viewed as progress the extension of the system to unemployed Aboriginal people.
- The likely outcome from the proposed changes to CDEP is that individual and community income will decline and many of the critical services which exist in the community will no longer be funded as CDEP places are cut. Loss of this community infrastructure and the inevitable dramatic rise in unemployment will further undermine the viability of these communities now and into the future.

4.2.1 Indigenous job seekers to be caught by the Social Security penalty system

Mainstream employment services can often be ill equipped to deal appropriately with the specific and special needs of Indigenous job seekers which through historical data over the last decade has shown repeatedly higher incidences of Social Security penalties incurred by Indigenous people. From the

introduction of the current compliance system under Welfare to Work Indigenous people have been overrepresented in those who were subject to 8 week no payment periods. It is of note that during the last year there has been a reduction in the numbers of Indigenous people impacted by 8 week no payment periods. This reduction can in part be attributed to work by the Government in relation to vulnerability indicators with the extension of categories to include those from NT communities where CDEP had closed down, changes to the definition of homelessness and where someone has had a previous serious failure imposed in the preceding twelve months.

As a consequence of the CDEP changes proposed in the Bill larger numbers of Indigenous job seekers will, for the first time, find themselves subject to the Social Security compliance regime. This is of particular concern given that the impact of penalties on Indigenous communities is particularly severe. Indigenous kinship responsibilities may obligate community members to support one another and share resources. Multiple penalties incurred by a number of individuals in an Indigenous community may therefore lead to a considerable loss of resources. Indigenous communities will also be incurring greater disadvantage through the loss of CDEP wages and , this may compound the experience of deprivation amongst these communities.

Indigenous people are at greater risk of incurring Social Security penalties for the following reasons:

- Lower levels of literacy and numeracy;
- Complexity of Centrelink forms;
- Higher levels of mobility amongst Indigenous people;
- Inadequate postal services in some areas;
- Lack of transport;
- Lack of understanding by relevant staff of the difficulties Indigenous people may experience in finding work;
- Are less likely to challenge decisions through the appeal and review system; and
- A lack of confidence by Indigenous people that Government authorities will deal with them fairly.

From 1 July 2009 a new system of penalties will replace the discredited “three strikes” penalty regime. Under the new system there will be increased access to financial hardship provisions and in some limited circumstances, the ability to “work off” the penalty by undertaking a period of approved intensive activities. Unfortunately, the system of eight week non payment penalties remains largely intact. The extraordinary complexity of the system, which includes 5 categories of failures and penalties and differing principles and rules that underpin each category, will place Indigenous people at even greater risk of incurring penalties.

4.2.2 Proposed changes will exacerbate Indigenous disadvantage:

We are justifiably concerned that the overhaul of CDEP far from improving the living standards of Indigenous Australians in remote communities will actually further entrench poverty and disadvantage through lower rates of payment, higher rates of unemployment and a decline in basic community infrastructure.

NWRN welcomes the commitment to provide 'real' employment opportunities for Indigenous Australians who, until now, have been working in jobs delivering vital services to their communities but, through the classification of these jobs as CDEP, have been grossly underpaid over many decades for their time, effort and skills. For those workers lucky enough to secure ongoing employment through this initiative, their economic circumstances and that of their families may improve as a result of an increase in employment earnings. In addition to increased financial independence, there will also be other important benefits that can occur if a person successfully transitions from a CDEP subsidised employment position to a living wage. The CDEP participants who transition to 'real jobs' will have the full benefits of employment: wages, leave, superannuation, training and professional development. However, for the vast majority of people in the Northern Territory, they are likely to be significantly worse off with little prospect of employment within their own communities.

In this regard, we draw the Committee's attention to the Centre for Aboriginal Economic Policy Research's (CAEPR) submission to the Australian Government's Increasing Indigenous Employment Opportunity Discussion Paper, No. 16/2008. In its submission, the Centre estimates that out of the 8,000 CDEP participants in the Northern Territory, there is likely to be only 2,000 jobs created.

Of particular concern is Altman's analysis and conclusions at paragraph 32 of the submission, as follows:

"According to the latest Labour Force Survey (ABS Cat No. 6287.0 2008) in 2007 there were 17, 800 Indigenous people employed in the Northern Territory and 3, 000 unemployed. Of the employed about 7, 800 would have been CDEP participants. Assuming that a net 5, 800 of these participants are reclassified as unemployed (on the reformed CDEP program) or not in the labour force, the employment to population ratio that stood at 43 per cent in 2007 is likely to decrease to 29 per cent after the CDEP reform. In other words in the NT, the Australian Government's goal of closing the employment to 50 per cent (from 43 per cent with CDEP) is likely to widen to 29 per cent without the CDEP program. This likely widening makes no allowance for the worsening employment prospects for the 12, 000 estimated to be at work. Nation wide it is possible that that the Indigenous unemployment rate could double from 14 per cent to 28 per cent notwithstanding commitments of the Australian Government to provide public sector jobs and of the Australian Employment Covenant to provide up to 50,000 job opportunities to a now open-ended timeframe."

At paragraph 33:

"It is equally worrying that numerous tasks currently supported by CDEP organisations and CDEP participants that are in the national interest might be jeopardized. These include environmental work on the vast Indigenous estate and in Indigenous Protection Areas; coastal surveillance and bio-security

contract work for Australian Customs and AQIS that provides top up for CDEP; participation in the Indigenous visual arts sector; and emerging engagement in carbon abatement enterprises. All such activities are built on the institutional architecture provided by CDEP organisations and many are undertaken by residents of remote outstations.”

Whilst the CDEP reforms are justified on the basis that it will contribute to “closing the employment gap by building economic and social capacity among Indigenous individuals and communities”(Increasing Indigenous Employment Opportunity, Proposed Reforms to the CDEP and Indigenous Employment Programs, Australian Government, October 2008), there is little indication of how this will be practically achieved and employment opportunities will be created in remote communities, outside the 2,000 or so jobs likely to be derived through the Government’s Job Package. At a time of global economic recession, when unemployment is increasing on a scale, the likes of which has not been seen for many years, extreme caution should be exercised in implementing such reforms which are likely to have significant and profound impacts upon Indigenous people, their families and communities.

Those left to remain on Social Security payments (both existing CDEP participants from 1 July 2011 and new CDEP participants from 1 July 2009) will be significantly disadvantaged financially as a consequence of the reforms. Earlier research conducted by CAEPR, noted that on average CDEP participants earned \$5,668 per annum more than unemployed people as demonstrated from the following table from CAEPR Discussion Paper No. 271 which used ABS National Aboriginal and Torres Strait Islander Social Security statistics:

Table 8. Average gross personal weekly income (\$), by labour force status and region,^a 2002

	Major cities	Inner regional	Outer regional	Remote	Very remote
Employed					
CDEP	291	279	275	271	276
Mainstream	640	498	576	587	581
Unemployed	161	166	168	168	167
Not in the labour force	214	219	220	190	213
Total	405	319	359	283	344

Note: (a) Table population is Indigenous CDEP participants aged 15–64 years.

Source: NATSISS (2002).

Significant hardship will flow from the removal of the considerable benefits derived from the current CDEP scheme through a more generous income test, the CDEP supplement payment and the ‘top wages’ component. Also, worrying is the expected loss of the social and community benefits attached to the current CDEP programs that enable Indigenous people to participate in customary activities

such as fishing and hunting, ceremonies or festivals, recreational or cultural pursuits all of which contribute to the social capital of Indigenous communities. In the current environment it is difficult to see how the CDEP reforms will make a contribution towards meeting the Government's objective of "closing the gap". Indeed, NWRN would argue that the effects of the proposed CDEP reforms in Indigenous communities will in some places, actually lead to a widening of this gap.

A further adverse consequence of the proposed reforms will be that as CDEP participants go onto Social Security payments, their CDEP money will be subject to the NT income management provisions.

4.3 NWRN Recommendations:

NWRN strongly urges a major rethink of the CDEP reforms. At the very least any reforms must ensure that Aboriginal people are not subjected to the Social Security penalties regime and that guarantees are given that former CDEP services will be fully funded at proper wages rates.

NWRN recommends that serious consideration is given to rejecting the proposed changes so that the current CDEP is retained with a commitment to making improvements to the CDEP program in accordance with the proposals put forward by CAEPR in its submission to the Australian Government's Increasing Indigenous Employment Opportunity Discussion Paper. This would need to occur in conjunction with a considerable expansion of fully funded jobs in essential services.