

9 June 2017

Committee Secretary  
Senate Finance and Public Administration Committees

By email: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

Dear Committee Secretary

### **NSSRN submission to the inquiry in relation to the Community Development Program**

1. Thank you for the opportunity to make a submission to this inquiry into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP).

2. The National Social Security Rights Network (NSSRN) is a national peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country which provide free and expert legal assistance to current and former social security and family assistance recipients. The NSSRN draws on this front line experience in developing its submissions and policy positions.

### **Overview - social security penalties under the Community Development Program**

3. This inquiry's terms of reference raise a range of issues about the appropriateness and effectiveness of the CDP. This is appropriate, given the scale of this program's failings. This submission focuses on the intersection between the CDP and social security legislation and administration, our area of expertise, and in particular the application of social security penalties to CDP participants under that legislation (term of reference (d)).

4. There are about 35,000 CDP participants in remote Australia, most Indigenous. They make up about 5% of all job seekers receiving social security payments nationally. They are subject to social security legislation, including the framework of sanctions for job seekers who fail to meet their mutual obligation requirements, called the "job seeker compliance framework".

5. The number of penalties applied to CDP participants began to increase under its predecessor program, the Remote Jobs and Communities Program (RJCP), which was introduced in 2013. However, the number of penalties escalated significantly following the replacement of the RJCP with the CDP in July 2015. The number of penalties surged in late 2015 and early 2016. Despite a small decrease in the number of penalties in the last quarter of 2016 (the most recent for which there is publicly available data),<sup>1</sup> the staggering outcome is that this small minority of job seekers are attracting about half of all penalties nationally. There is more detail about this in a series of papers by Lisa Fowkes, a researcher at the Centre for Aboriginal Economic Policy Research (CAEPR).<sup>2</sup> The

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<sup>1</sup> The data series is published by the Department of Employment at <https://www.employment.gov.au/job-seeker-compliance-data>.

<sup>2</sup> At <http://caepr.anu.edu.au/Authors/Lisa-Fowkes>.

NSSRN also published a briefing paper on the CDP in mid 2016 which gives background to the job seeker compliance framework and a comparison of the CDP with the national compliance framework (attached to this submission).<sup>3</sup>

6. In short, CDP participants are attracting about the same number of penalties as jobactive participants. Jobactive is the main national employment services program with about 20 times the number of participants.

7. Contrary to some public comments, these are real penalties, representing money permanently withheld from the poverty level income of some of the poorest people and communities in Australia. The main type of penalty being applied is a “No Show No Pay” failure, representing 10% of the job seeker’s income support payment. These penalties cannot be waived. There are also large numbers of “serious failures” being applied, eight weeks without payment. These penalties can be waived in certain circumstances, and at present the majority are being waived. However, about 22% are only partly waived and, on average, waiver is occurring after complete loss of income support for more than two weeks.<sup>4</sup> This money is not backpaid.

8. This is an utterly unacceptable policy outcome on any terms. NSSRN members who provide legal services in remote communities report that the flow on impact of high levels of penalties includes: increased levels of rent arrears, inability to pay off “book ups” at the local store, going without food, increased ‘humberging’ of family members and disengagement from government services and CDP providers.

9. It is even more so, because the application of a grossly disproportionate number of penalties to this small group of people has not achieved any significant policy outcome. One of the main external program objectives is to increase the take up of employment. While some people have found and kept jobs, most CDP participants have simply suffered loss of income, pushing them and their communities further below the poverty line.

10. This level of penalties has not even driven improved levels of compliance by CDP participants with social security mutual obligation requirements. The number of penalties has risen in each quarter since July 2015, apart from a small fall in the last quarter of 2016 that may be attributable to time off for some participants over the holiday period. There are no publicly available figures for 2017 at this time.

11. The main Government response to this situation was the set of measures put forward in the *Social Security Legislation Amendment (Community Development Program) Bill 2015*. In essence, the bill proposed to create a distinct income support system for job seekers in remote Australia, most Indigenous. The Minister for Indigenous Affairs was to be given significant power to change the rules of this system by legislative instrument, subject only to the possibility of Parliamentary disallowance. The system would have a different income test and transfer the core administration of payments and the compliance framework to CDP provider organisations.

12. The Government announced in this year’s Budget that this proposal would not proceed. Instead, the Minister has stated that he will consult around a new model. It appears, however, that the focus may still be on creating a separate set of social security rules for CDP participants as, among other things, the Government has stated its intention that its proposed new compliance framework will not apply in CDP regions.

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<sup>3</sup> Also on our website at <http://www.nssrn.org.au/category/briefing-paper/>.

<sup>4</sup> Senate Finance and Public Administration Legislation Committee, Supplementary Estimates 2016-17, Answers to Questions on Notice No. 99.

13. It is positive that the Minister has recognised both the need for overhaul of the CDP and that the proposal in the 2015 bill is not the answer.

14. However, the NSSRN is concerned that the focus seems to remain on carving out a separate set of social security rules for CDP participants, other technical changes to social security rules around payments, income tests or penalties or transferring administrative responsibility from the Department of Human Services (DHS) to CDP providers.

15. This is the wrong approach. The fundamental problems with the CDP are not to do with social security legislation, but with basic features of the CDP's design and implementation. DHS administration and service delivery should be improved, not transferred to CDP providers.

### **NSSRN position and recommendations - key areas for reform**

#### Mutual obligation requirements (work for the dole)

16. One of the main drivers of the current problems are the more onerous mutual obligation requirements which apply to CDP participants, compared to other job seekers nationally. CDP participants aged 18 to 49 with full-time work capacity have full-time work for the dole requirements from day one in the program. They must attend five hours per day, five days per week of activities all year round (apart from time off or periods of exemption). By contrast, job seekers in the job active program only have work for the dole requirements after 12 months in the program and then for only 6 months of the year.

17. As a result, penalties for failure to attend activities (NSNP failures) have sky rocketed under CDP.

18. This does not require change to social security legislation to address. There is already scope within existing legislation and policy to tailor mutual obligation requirements to the circumstances of particular job seekers.

19. The requirements under the CDP should be immediately reduced in line with the requirements applicable to participants in other employment services programs. CDP providers should have reasonable flexibility to determine appropriate hours and times of participation to suit the circumstances of local communities and individual participants.

#### Contracts with CDP providers and discretion

19. A second significant driver of penalties appears to be the contractual arrangements with CDP providers. A number of commentators have argued that these arrangements create a financial imperative for CDP providers to recommend to DHS that job seekers who fail to meet their obligations without reasonable excuse receive a penalty, rather than responding to the job seeker's behaviour in some other way where appropriate and irrespective of whether engaging the compliance system is the most effective way to re-engage the job seeker.

20. It is a key feature of the employment services programs that providers have discretion about how to respond to job seeker non-compliance, and in particular about whether to recommend to DHS that the job seeker be investigated for a penalty. The rationale for this is that the provider is best-placed to know what the most appropriate action to take is with the aim of re-engaging or establishing a relationship with the job seeker.

21. Although not heavily used, providers deal with a small but significant proportion of instances of non-compliance by exercising their discretion in this way. Generally in the jobactive program, for instance, providers have tended to respond to about 5% of instances of non-attendance at regular appointments with them in this way in recent years.

22. Formally speaking, CDP providers have the same discretion. However, it appears that payments under their contracts are structured so that if they exercise their discretion they receive a lower payment per job seeker. This payment structure came into full effect at the end of 2015 (due to the expiry of transitional funding arrangements) and this appears to track a significant escalation in penalties beginning in late 2015 and continuing in 2016.

23. The financial disincentive for CDP providers to use their discretion, rather than report CDP job seekers to DHS for potential application of penalties, should be immediately removed. It may be appropriate to regulate how CDP providers exercise this discretion in some way. However, the use of fee structures to affect the cash flow and viability of providers is a crude policy tool which has contributed to the unacceptable levels of penalties in the program. This needs urgent reform, a reform which again does not require any change to social security legislation or policy.

#### Building on the strengths of the CDEP

24. The basic logic of the CDP also needs to be revisited. The CDP is fundamentally a modification of the mainstream employment services model for remote Australia, with participants required to meet (more onerous) obligations to look for work or undertake activities as a condition of receiving income support. These obligations are backed up by the job seeker compliance framework.

25. The CDP and its predecessor the Remote Jobs and Communities Program (RJCP) replaced a number of programs, but most importantly the Community Development Employment Projects (CDEP) program. The CDEP program operated alongside the income support system and mainstream employment services. Indigenous organisations were given block grants to provide part-time employment. CDEP participants were employees of CDEP providers and worked for CDEP wages. Independent expert evaluation of the CDEP program identified a number of strengths and successes, while also acknowledging problems. Despite this, the CDEP was progressively dismantled and remote participants shifted onto social security payments.

26. The statistics on social security penalties show that dismantling CDEP and shifting workers into the social security system has been a failure.

27. Once again, addressing this does not require change to social security legislation. Building on the strengths of the CDEP may also concerns such as the administrative burden of the job seeker compliance framework on providers.

28. Reform of the CDP needs to address these fundamental problems. Solutions to these problems need to be developed through genuine consultation and engagement with remote communities, Indigenous organisations and other stakeholders and experts. Consultation limited to a narrow band of solutions, to do with technical changes to social security rules, rather than fundamental reform, is not genuine consultation.

29. While genuine reform must emerge from this engagement, there is increasing consensus that a fundamental reform is required which genuinely draws on the strengths of the former CDEP program. The Aboriginal Peak Organisations of the Northern Territory have developed one such model with its Remote Development and Employment Scheme. The NSSRN endorses this model. It

is consistent with our view that there needs to be a separate employment and community development program operating alongside the social security system in remote communities.

### A better resourced Department of Human Services

30. Finally, the NSSRN renews its longstanding call for additional resources to support remote service delivery by DHS. The fair and effective operation of mutual obligation requirements and the compliance framework depends, in large part, on a range of processes for assessing job seeker's medical conditions, barriers to employment and personal circumstances which are conducted by DHS.

31. The Commonwealth Ombudsman raised concerns about DHS' capacity to identify and properly assess the medical conditions and disabilities of remote Indigenous Australians in a recent report.<sup>5</sup> Common factors in these cases seem to include use of phone rather than face to face assessment, and lack of interpreters, reflecting limited resources. These same factors may undermine the efficacy of other assessment processes for job seekers, such as the comprehensive compliance assessment process for determining whether to apply a serious failure, a problem noted in 2010 in the last major review of the compliance system.<sup>6</sup>

32. For years NSSRN has highlighted the need for increased resourcing for administration of social security payments in remote indigenous communities. In its Federal Budget submissions it has called for increased funding to increase the numbers of social workers and job capacity assessors.<sup>7</sup> Increased funding is needed to increase the presence of DHS remote servicing teams in remote communities and ensure they always have a social worker and job capacity assessor available for face to face appointments.

33. The Commonwealth Ombudsman also recently raised concerns about the availability of Indigenous interpreters for government agencies and individuals.<sup>8</sup> It highlighted a range of reasons, including the absence of an 'on demand' service model, insufficient numbers of accredited interpreters and lack of training options. It recommended a whole of government approach to the issue. The NSSRN welcomes the establishing of an inter-departmental committee on this issue by the Department of Prime Minister and Cabinet and recommends that it progress measures to address this issue urgently.

34. Our members who provide legal services in remote communities report long wait times to get through to DHS participation solutions teams which are responsible for administering the job seeker compliance framework. This can delay restoring income support to vulnerable job seekers. Addressing the accessibility of these teams should be a first priority for reform.

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<sup>5</sup> Commonwealth Ombudsman, *Department of Human Services – Accessibility of the Disability Support Pension for remote Indigenous Australians* (2016), at [http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0024/42558/Accessibility-of-DSP-for-remote-Indigenous-Australians\\_Final-report.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0024/42558/Accessibility-of-DSP-for-remote-Indigenous-Australians_Final-report.pdf).

<sup>6</sup> Disney, Buduls and Grant "Independent Review of the Job Seeker Compliance Framework" September 2010, Chapter 5, [https://docs.employment.gov.au/system/files/doc/other/impacts\\_of\\_the\\_new\\_job\\_seeker\\_compliance\\_framework\\_report\\_of\\_the\\_independent\\_review.pdf](https://docs.employment.gov.au/system/files/doc/other/impacts_of_the_new_job_seeker_compliance_framework_report_of_the_independent_review.pdf)

<sup>7</sup> See for example the NWRN 2015-2016 Federal Budget Submission <http://www.welfarerights.org.au/nwrn-2015-2016-federal-budget-submission> p 17

<sup>8</sup> Commonwealth Ombudsman, *Accessibility of Indigenous Language Interpreters – Talking in Language Follow Up Investigation* (2016), at [http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0028/42598/December-2016-Investigation-into-Indigenous-Language-Interpreters.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0028/42598/December-2016-Investigation-into-Indigenous-Language-Interpreters.pdf).

35. Increasing the functioning and capacity of DHS, which is the government's specialist service delivery agency, is the answer, not handing over administrative functions to CDP providers, especially if the increased burden on those providers diverts them away from their core functions of providing valuable activities and helping job seekers into employment.

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