

Community Development Program – The impact of penalties on participants



**NATIONAL
SOCIAL SECURITY**
RIGHTS NETWORK

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Acknowledgments

This research report was authored by the National Social Security Rights Network (NSSRN) with significant input from lawyers, educators and other staff across the North Australian Aboriginal Justice Agency (NAAJA).

NAAJA is a multifaceted organisation that has sections devoted to criminal law, prisoner and post detention assistance, community legal education, various justice projects and civil law. NAAJA's civil section provide advice and representation in many areas of civil law including with respect to social security. NAAJA's contribution to the project is primarily as a conduit to the people interviewed in community in the Northern Territory.

NSSRN would like to particularly thank the staff of NAAJA who conducted the interviews with clients and shared their observations in staff interviews, on top of their regular and heavy casework load and other work. Without their contribution there would be no research report. While we acknowledge their assistance, we also note that the NAAJA employees interviewed for this research provided their own personal views and opinions which are not necessarily the views of NAAJA.

NSSRN was also greatly assisted by advisory group members, Judy Harrison and Lisa Fowkes, who provided crucial guidance on the planning and progress of the project and review of the final draft, along with Joni Gear, a former staff member of NSSRN.

This research is one of the projects NSSRN is funded to undertake by the Department of Social Services as part of its grant agreement and NSSRN appreciates the Department's support and engagement.

NAAJA thanks its major pro bono partner, Hall & Wilcox, for support with legal research and graphic design.



About the NSSRN

The National Social Security Rights Network (NSSRN) is a peak community organisation focussing on income support law, policy and administration. Our members are community legal centres (CLCs) across the country which provide free and independent legal assistance to current and former social security and family assistance claimants and recipients. Our members comprise:

- *Barwon Community Legal Service (VIC)*
- *Basic Rights Queensland Inc (QLD)*
- *Canberra Community Law Limited (ACT)*
- *Darwin Community Legal Service (NT)*
- *Fremantle Community Legal Centre (WA)*
- *Hobart Community Legal Service Inc (TAS)*
- *Illawarra Legal Centre (NSW)*
- *Launceston Community Legal Centre (TAS)*
- *North Australian Aboriginal Justice Agency (Associate Member) (NT)*
- *Social Security Rights Victoria (VIC)*
- *Sussex Street Community Law Service (WA)*
- *Townsville Community Law (QLD)*
- *Uniting Communities Law Centre (SA)*
- *Welfare Rights & Advocacy Service (WA)*
- *Welfare Rights Centre (NSW)*

The NSSRN's research and policy positions are informed by our members' unique access to client-related experience. This allows us to make meaningful contributions to a range of policy and service delivery areas.

See our website for more information about [our impact](#).

Executive Summary

There simply isn't enough work available for everyone looking for a job in Australia. In 2019 the then Department of Jobs and Small Business reported that, on average, there are 20 applicants per advertised vacancy.¹ The situation is even worse if you live in a remote area,² and worse still if you have a disability³ or are Aboriginal or Torres Strait Islander.⁴ This is the situation of many Community Development Program (CDP) participants. One in ten CDP participants have a disability,⁵ while Aboriginal and Torres Strait Islander people made up 82.5% of CDP participants nationally and 93% in the Northern Territory as of 2017.⁶

The experiences of CDP participants and their lawyers interviewed during the course of this research highlight the various structural barriers to social and economic participation faced by people living in remote communities, including limited access to job opportunities, technology and communications, and essential goods and services.

Many people had no access to phone reception, whether land line or mobile, and no internet or post. One person travelled 190 kilometres to buy cheaper food. Some had to travel up to five hours to see a lawyer, or had to wait two months for a lawyer to travel into community on a time-pressured bush trip.

The research interviews expose the reality for CDP participants and their communities that the CDP program, rather than alleviating these structural barriers, appears to be creating further obstacles. NAAJA's clients, their families and broader communities experienced financial hardship which negatively impacted on their food and housing security, physical and mental health and well-being. The CDP penalties system is little understood by the people subjected to it and seems to have little relevance to their hopes of finding paid work.

In exchange for 'the dole', CDP participants were required to perform Work for the Dole 'activities' which most interviewees described as meaningless or demeaning. Interviewees gave examples such as being told to pick up rubbish in areas that had already been cleaned. Understood in the context of Australia's history, this program brings back disturbing memories for Aboriginal and Torres Strait Islander people of being required to work for rations and being controlled by their colonisers.

Where CDP participants were undertaking substantial work, they were doing it alongside paid employees. However, as they were not considered to be employees, they were not paid as employees. Rather, they were paid less than the minimum wage. Further, they did so without enjoying the same entitlements (superannuation) and protections (workplace health and safety, workers compensation) as other workers.

CDP participants who could not attend required activities had their income support payments suspended and, in some cases, cancelled where they were deemed to have failed to appropriately re-engage. The inaccessibility and unreliability of communications technology in remote locations meant that some clients did not know their payments were affected until they found themselves without money. They then struggled to find out from their CDP provider or Centrelink what had happened. For those with the means and reception to make phone calls, the long wait times made it difficult to get through to Centrelink, and those who did make it through sometimes found it difficult to communicate, with access to interpreters being patchy.

People who were cut off from income support often turned to family for support, putting further strain on household budgets and relationships, and in many cases impacting the broader community.

The interviews highlight the fact that difficulties of life in a remote community combined with cultural obligations mean there are many situations where compliance with activities is not possible, situations including disability and illness, family problems, sorry business, extreme weather. The exercise of flexibility or discretion by CDP providers in recording attendance at activities, and the granting of exemptions by Centrelink, often appeared arbitrary and dependent on the attitudes and cultural awareness of individual staff members.

Job plans did not adequately take into account lack of employment opportunities, barriers to employment, or cultural differences such as the incompatibility of the Western work day with community culture. The outsourcing of CDP provision to different organisations makes differences in quality more likely.

1 Department of Jobs and Small Business, Australian Jobs 2019, <https://docs.employment.gov.au/system/files/doc/other/australianjobs2019.pdf>, p. 39.

2 Dockery, M. and Lovell, J. 'Far Removed: An Insight into the Labour Markets of Remote Communities in Central Australia', Australian Journal of Labour Economics, vol. 19, no. 3, 2016, p. 149.

3 Australian Institute of Health and Welfare, People with Disability in Australia, 3 September 2019 <https://www.aihw.gov.au/reports/dis/73-1/people-with-disability-in-australia/employment/labour-force-participation>

4 Gray, M., Hunter, B. and Lohoar S. Increasing Indigenous employment rates, Issue paper no. 3 produce for the Closing the Gap Clearinghouse, March 2012, p. 11.

5 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM134, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, p.3.

6 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio. Caseload at 29 September 2017.

The CDP continues to be racially discriminatory, requiring participants to engage in more job activity hours than jobseekers in non-remote areas and subjecting participants to strict non-compliance measures. There continues to be little flexibility in relation to choice of work and establishing work arrangements which take into account cultural practices. This is significant given that over 80% of CDP participants nationally identify as Aboriginal or Torres Strait Islander. Many participants are required to engage in demoralising work activities in remote areas which offer scarce job opportunities that would allow them to exit the program.

This picture of how the CDP operates in practice explains the huge increase in penalties issued under the CDP compared with previous remote jobs programs.⁷ Penalties in the form of payment suspensions exacerbate the financial insecurity many participants already experience. While penalties can theoretically be challenged through an administrative review processes, there are insufficient legal service resources to ensure that there is effective community legal education. This means CDP participants are often unaware of their rights and cannot access legal advice and representation quickly enough to receive back payment.

With NAAJA no longer having specialist social security funding, and their generalist civil lawyers doing their best to identify and resolve CDP issues amongst the other legal issues their clients face, their capacity is limited to what can be achieved during legal clinics that span a few days every two months. In practice, the vast distances and remoteness often means that the 13 week time limit for appealing an adverse Centrelink decision to obtain backpayment has often passed before people can obtain the legal assistance they need to work out what has happened with their payments. This information is critical to lodging a timely appeal and receiving backpayment.

While there have been some reforms to the CDP in a positive direction, this research demonstrates they do not go nearly far enough to prevent the program from continuing to harm many participants, their families and communities.

Ultimately, this research provides further evidence that the CDP is flawed. The program does not create jobs or pathways to paid work and instead harms people. However, while the program continues to operate, this report's recommendations suggest ways to try to address some of the problems and reduce some of the program's most serious harms.

In the long term, however, there must be genuine engagement with remote communities to develop a remote employment program that is effective in supporting people into meaningful paid work.

7 Fowkes, L. 'The application of income support obligations and penalties to remote Indigenous Australians, 2013–18' (Working Paper 126, 2019), Centre for Aboriginal Economic Policy Research, p. 10.

Recommendations

It is vital that any remote employment program delivers community development by meeting community needs, providing meaningful training and ensuring economic development. The NSSRN has long advocated for the abolition of the CDP and its replacement with the comprehensive alternative model originally prepared by the Aboriginal Peak Organisations NT (APONT), the Fair Work and Strong Communities: Remote Development and Employment Scheme (RDES).⁸

APONT's proposal aims to achieve sustainable change in remote communities by ensuring that Indigenous people have meaningful control over their lives. The RDES is "place based, community driven, and establishes a framework for long term collaborative effort across governments, employers and Indigenous organisations to increase economic opportunities in remote communities."⁹ The proposal emphasises job creation, incentives to participate (rather than penalties) and recognises cultural priorities.¹⁰

While the existing CDP program continues to operate, the NSSRN makes the following recommendations in light of the issues arising from the research interviews with NAAJA clients and lawyers:

RECOMMENDATION 1: EMPLOYMENT OPPORTUNITIES

- a) *Increase opportunities for paid work in remote areas.*
- b) *Drawing on the APONT model, fund the establishment of at least 12,000 new jobs at award wages in remote communities to be wholly, or predominantly, created in Indigenous community organisations.*
- c) *Provide a genuine pathway to paid employment with meaningful activities that build employment skills.*

RECOMMENDATION 2: CENTRELINK SERVICE DELIVERY

- a) *Further develop practical cultural awareness training to assist Centrelink frontline customer service and compliance team staff members to better understand the context in which they are working.*
- b) *Place the onus on Centrelink at the outset to ask CDP participants whether their primary language is a language other than English and whether they would like an interpreter to be provided, rather than on the CDP participant to ask for an interpreter. Centrelink should note the response on file for future communications.*
- c) *Increase resourcing to improve access to face-to-face Centrelink services, staffed with local people.*

RECOMMENDATION 3: COMPLIANCE WITH ACTIVITY OBLIGATIONS

- a) *Reduce the number of hours which CDP participants must complete in order to comply with activity obligations so that, at the very least, they are no longer required to undertake more hours than jobactive participants.*
- b) *Building on the 1 March 2019 changes, provide more flexibility and discretion to CDP Providers to excuse non-attendance in a broader range of circumstances with particular awareness of cultural considerations; for example, confirming that CDP participants can advise of a reasonable excuse after the event.*
- c) *Provide Centrelink staff with more information about the range of circumstances where it would be valid to grant an exemption as part of ongoing cultural training. Policies should be updated accordingly.*

8 Aboriginal Peak Organisations Northern Territory 'Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme', May 2017 http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf

9 Ibid

10 Ibid

RECOMMENDATION 4: QUALITY OF CDP PROVIDERS

- a) *Increase control over CDP providers by locally controlled Indigenous community organisations to effectively monitor and evaluate the performance of CDP providers and ensure that the quality of service provision does not rely on the highly variable quality of service delivered by each individual provider.*
- b) *Assess the performance of CDP providers including criteria which measures their success in:*
 - i. *Genuinely taking into account participants' barriers to engaging with the provider and Centrelink.*
 - ii. *Providing a culturally sensitive and safe service.*
 - iii. *Ensuring the safety of program from a health and safety perspective.*
- c) *Require CDP providers to undertake cultural awareness training and demonstrate understanding of the above obligations.*

RECOMMENDATION 5: UNMET LEGAL NEED AND UNDER-RESOURCING OF LEGAL SERVICES

- a) *Invest in comprehensive community legal education for affected communities on the CDP which includes an explanation of the penalty system.*
- b) *Fund specialist social security legal services to service communities where the CDP program operates to ensure there are services with the capacity and expertise to deal with CDP and Centrelink matters in general.*

RECOMMENDATION 6: TRANSPARENT PUBLISHING OF CDP INFORMATION AND DATA

- a) *Publish online current operational versions of the following documents in order to make the operation of the CDP transparent and publically accountable:*
 - i. *CDP Guidelines*
 - ii. *Programme Management Framework*
 - iii. *Provider Funding Agreement and related Remote Activity Conditions*
 - iv. *CDP provider performance review guides*
- b) *Publish data online on a yearly basis showing the following indicators:*
 - i. *Number of CDP participants at date of report*
 - ii. *Breakdown of CDP participants by types of identity markers at date of report*
 - iii. *Employment outcomes of CDP participants*
 - iv. *Participation in Work for the Dole activities*
 - v. *Monthly jobseeker engagement rates*
 - vi. *Hosted placemenet rates*
 - vii. *Employer Incentive Fund use rates*
 - viii. *Indigenous Enterprise Development use rates*
 - ix. *Complaints and feedback monitoring data*

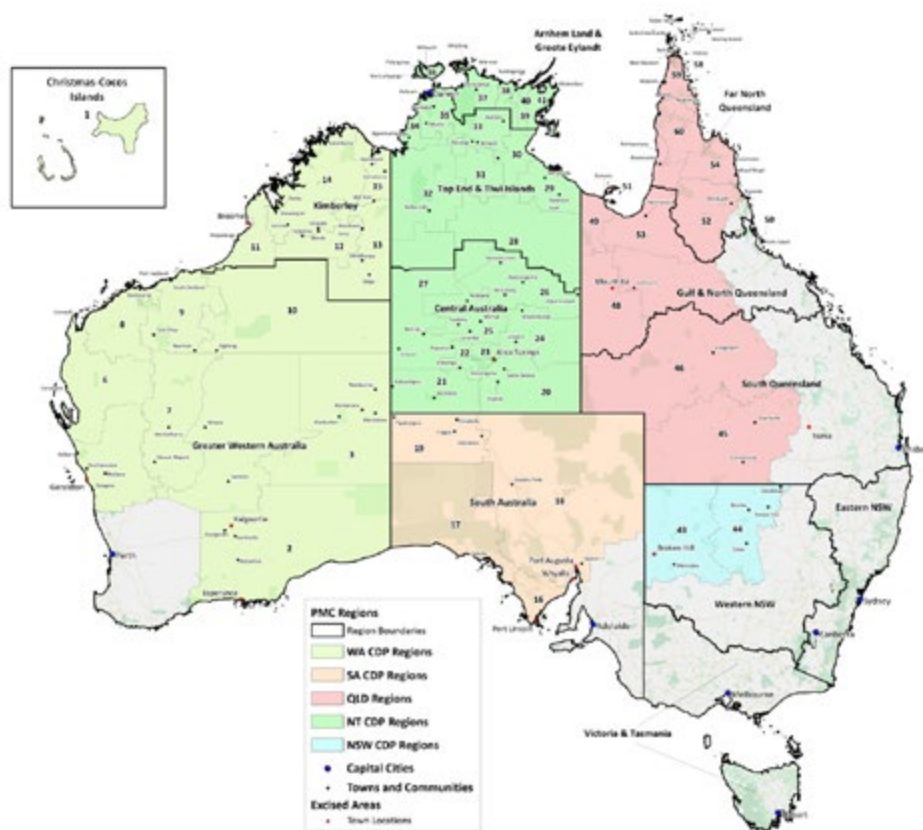
Background

The Community Development Program (CDP) is the Australian Government's employment and community development service for people who receive unemployment social security payments and live in remote Australia.¹¹ The CDP was introduced in July 2015. It was an amendment to the Remote Jobs and Communities Program introduced in 2013 by the then Federal Labor Government.

The CDP applies to job seekers living in remote regions and who are in receipt of a working age unemployment payment. Almost 80% are Newstart Allowance recipients, almost 11% are Youth Allowance recipients and 3.5% are Parenting Payment recipients.¹²

The CDP operates in over 1,000 remote communities, covering 75% of Australia's land mass.¹³ It is estimated that 11% of people living in remote communities participate in the CDP, with 67.8% of participants living in "Very Remote Australia" and 24.5% living in "Remote Australia".¹⁴

As of June 2018, there were approximately 32,000 CDP participants and more than 80% of participants identified as Aboriginal or Torres Strait Islander.¹⁵ The following map shows the regions covered by the CDP.¹⁶



11 The CDP applies to job seekers living in remote regions and who are in receipt of Newstart allowance; Youth Allowance, unless the recipient is a full-time student or a new apprentice; Parenting Payment, if the recipient is subject to participation requirements; Special Benefit Payment, if the person is a nominated visa holder, or Disability Support Pensions payments.

12 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, p. 3.

13 Department of Prime Minister and Cabinet, 'Australian Government response to the Senate Finance and Public Administration References Committee inquiry report - on the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)', November 2018, p. 4.

14 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, p. 4.

15 National Indigenous Australians Agency, The Community Development Programme (CDP), https://www.niaa.gov.au/sites/default/files/publications/cdp-regions_25-June-18.pdf; Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, p. 4.

16 National Indigenous Australians Agency, The Community Development Programme (CDP), https://www.niaa.gov.au/sites/default/files/publications/cdp-regions_25-June-18.pdf

The National Indigenous Australians Agency (NIAA) of the Department of Prime Minister & Cabinet has the principal role in coordinating and implementing the CDP.¹⁷ Three other government departments also play a role in the administration of the CDP:

- the Department of Social Services is responsible for social security policy underpinning the CDP,
- the Department of Human Services is responsible for delivering income support payments and administering the CDP compliance framework, and
- the Department of Employment, Skills, Small and Family Business oversees participation and compliance of the program as administered by employment service providers.¹⁸

The CDP is purportedly “designed around the unique social and labour market conditions in remote Australia and is part of the Australian Government’s agenda for increasing employment and breaking the cycle of welfare dependency.”¹⁹

Since its introduction, the CDP has been widely criticised for adversely affecting the lives of its participants. As the majority of CDP participants identify as Indigenous, the program also has been scrutinised for discriminating against Aboriginal and Torres Strait Islander Australians living in remote areas.

Since 2015, the CDP has undergone a number of inquiries and investigations in response to concerns that the program is not meeting policy intentions or intended outcomes.²⁰ These culminated in reforms, announced in 2018 and put into effect from March 2019, that reduced the required number of mutual obligation activity hours, increased flexibility in work hours, and reduced income reporting requirements for some participants.²¹ These reforms also included a move to using Indigenous organisations to deliver the CDP program. The government also proposed subsidising 6,000 jobs for CDP participants to give participants access to at least minimum wage rates, superannuation and other work entitlements.²² However, this commitment was later reduced to 1,000 jobs.²³

CDP AND WORK FOR THE DOLE

The Federal Government has contractual arrangements with organisations in remote areas to provide services to CDP participants. These CDP providers oversee participation and compliance in Work for the Dole (WFD) and other activities.²⁴

The Guide to Social Security Law 3.2.9.70 provides that CDP participants between the ages of 18 and 49 must undertake WFD as long as they are receiving the full rate of income support, are not exempt from mutual obligation requirements and do not have an illness, injury or disability that would be aggravated by the work conditions.²⁵ WFD can also be undertaken voluntarily by CDP participants under 18 or over 49. CDP participants must engage in WFD from the date they commence in the program.

Under CDP, WFD involves undertaking 20 hours per week of a combination of “work like experiences and vocational/non-vocational training linked to a job”.²⁶ There is some flexibility as to when WFD can be conducted, and this includes outside of

17 Prior to July 2019, this role was undertaken by Indigenous Affairs Group (IAG), currently part of the Department of the Prime Minister and Cabinet. See Department of Prime Minister and Cabinet, ‘Prime Minister announces new National Indigenous Australians Agency’, 12 June 2019, <https://www.pmc.gov.au/news-centre/indigenous-affairs/prime-minister-announces-new-national-indigenous-australians-agency>

18 Department of Prime Minister and Cabinet, Australian Government response to the Senate Finance and Public Administration References Committee inquiry report - on the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP), November 2018.

19 Department of Employment, Skills, Small and Family Business, Community Development Program <https://www.employment.gov.au/community-development-program-cdp>

20 ANAO, ‘The Design and Implementation of the Community Development Program’, Commonwealth of Australia, 2017, <https://www.anao.gov.au/work/performance-audit/designand-implementation-community-development-program>; Senate Finance and Public Administration References Committee ‘Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)’, 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report

21 Scullion, N. ‘Community Development Program reforms: Supporting job seekers in remote Australia’, 23 January 2019 https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/6455050/upload_binary/6455050.pdf;fileType=application%2Fpdf#search=%22scullion%20%202010s%202019%2001%2023%22

22 Department of the Prime Minister and Cabinet, 2018-2019 Budget: Community Development Program reforms, https://www.pmc.gov.au/sites/default/files/publications/budget-fact-sheet-cdp-reforms_0.pdf

23 Scullion, N. ‘1,000 subsidised jobs and Indigenous service providers for the Community Development Program’, 4 February 2019, <https://ministers.pmc.gov.au/scullion/2019/1000-subsidised-jobs-and-indigenous-service-providers-community-development-program>

24 Aboriginal Peak Organisations Northern Territory ‘Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme’, May 2017 http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf

25 Department of Social Services, Guide to Social Security Law, 3.2.9.70 Suitable Activity - Work for the Dole - CDP <http://guides.dss.gov.au/guide-social-security-law/3/2/9/70>

26 Department of Social Services, Guide to Social Security Law, 3.2.9.70 Suitable Activity - Work for the Dole - CDP <http://guides.dss.gov.au/guide-social-security-law/3/2/9/70>

normal business hours. However, this can be dependent on the CDP provider and work options. If a participant is not able to meet the 20 hours per week requirement, adjustments may be made to meet their capacity.²⁷

Older CDP participants who are excluded from mandatory WFD must still undertake mutual obligation activities. CDP participants who are aged 50-59 must undertake 20 hours per week and those aged above 60 must undertake 15 hours per week of activities such as paid or voluntary work, study or training. Participants may volunteer to undertake WFD to fulfil their mutual obligation requirements. Reportedly, many older participants are placed in WFD due to a lack of alternative activity options.²⁸ As at September 2017, more than 75% of CDP participants were undertaking WFD.²⁹

CDP participants of all ages who have partial capacity to work, for example due to medical issues or caring responsibilities, must undertake at least 15 hours of mutual obligation activities per week.³⁰ Failure to participate or engage in these services results in financial penalties. In 2018-19, over 8,000 penalties were incurred by participants who had a partial capacity to work.³¹

CDP participants who engage in WFD have fewer workplace protections and benefits than ordinary employees. CDP participants who are required to do the full number of activity hours are effectively working for an amount well below the minimum wage. For example, a single person receiving the maximum rate of Newstart is paid \$14 for every hour of activities, not including job search or provider appointments. Further, the Social Security Act attempts to exclude CDP participants from being considered workers or employees for the purposes of the Work Health and Safety Act, the Safety, Rehabilitation and Compensation Act, the Superannuation Guarantee (Administration) Act and the Fair Work Act.³² Provider and employer responsibility for compliance with occupational health and safety laws is unclear.³³ CDP participants do not receive superannuation or long service leave. As such, they effectively operate as a different class of worker and do not enjoy the benefits of work afforded to employees.

PENALTY TYPES UNDER THE CDP

The CDP's mutual obligation compliance system is set out in Volume 1, Part 3, Division 3A of the Social Security (Administration) Act 1999 (Cth).³⁴ Penalties include:

No show no pay failures (section 42C)

- *failure to attend or is not punctual in attending an activity*
- *failure to comply with serious failure requirement*
- *commits misconduct while participating*
- *acting in a manner that could result in an offer of employment not being made*

Connection failures (42E)

- *failure to comply with s 63(2) or (4) – failure to contact, attend provide information, complete questionnaire, undergo medical examination*
- *failure to enter into an employment pathway plan*
- *failure to attend appointment*
- *failure to comply with notice under s 42F(1) to apply for jobs and/or show evidence of application*
- *failure to comply with job plan requirement to search for jobs*

Reconnection failures (s 42H)

- *failure to comply with a reconnection requirement or a further reconnection requirement*

27 Department of Social Services, Guide to Social Security Law, 3.2.9.70 Suitable Activity - Work for the Dole - CDP <http://guides.dss.gov.au/guide-social-security-law/3/2/9/70>

28 Fowkes, L. 'The application of income support obligations and penalties to remote Indigenous Australians, 2013-18' (Working Paper 126, 2019), Centre for Aboriginal Economic Policy Research, p. 11.

29 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio.

30 Department of Social Services, Guide to Social Security 3.2.8.10 Mutual Obligation Requirements for NSA/YA Job Seekers Overview <https://guides.dss.gov.au/guide-social-security-law/3/2/8/10>

31 Senate Finance and Public Administration Committee, Answers to Questions on Notice PM131, 2019-20 Supplementary Budget Estimates, Prime Minister and Cabinet Portfolio, p. 3.

32 Social Security Act 1991 (Cth), s 631C.

33 Senate Finance and Public Administration References Committee 'Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)', 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report, pp. 46-49.

34 Prior to mid-2018, all social security recipients were subject to this compliance regime. On 1 July 2018, the Targeted Compliance Framework commenced as the principal compliance regime under social security law, however CDP participants were excluded from the new framework (see sch 15, Social Services Legislation Amendment (Welfare Reform) Act 2018; s42ab Social Security (Administration) Act 1999). CDP participants are 'declared program participants', to whom Division 3A still applies. (Social Security (Declared Program Participant) Determination 2018).

Serious failure

- “persistent” failure to comply with obligations (including committing no show no pay, connection or reconnection failures) (42M)
- failure to accept an offer of suitable employment (42N)

Non-attendance failure (42SC)

- if per 42SA(1) a person fails to attend an appointment in a person’s job plan (b) or required to attend by notice under 63(2) (ba)

No Show No Pay penalties are a loss of the equivalent of a working day’s payment. They are set at 10% of fortnightly payment to mimic the effect of loss of a day’s pay based on an assumed 10 day working fortnight.

When a person receives three or more NSNP or reconnection failures within a six month period, DHS conducts a Capability Assessment to determine their level of non-compliance. If a person is found to be persistently non-compliant, they lose payments for 8 weeks. This may be waived if there are special circumstances. Alternatively, the person may choose to work off some of the penalty so that payments recommence before 8 weeks passes.

Refusal of work or misconduct leading to loss of work results in a loss of payment for 8 or 12 weeks depending on the circumstances.

If a person fails to attend an appointment with their provider, their payments are suspended until the person complies with their obligations. If a person is assessed by DHS as having a reasonable excuse for not attending work or an appointment, then there is no breach recorded.³⁵

Despite the program only having 32,957 participants in June 2018,³⁶ in the previous year a total of 205,214 penalties had been applied to CDP participants.³⁷ This constitutes an average of 16 penalties per participant.

TOTAL NUMBER OF FINANCIAL PENALTIES APPLIED TO CDP PARTICIPANTS DURING FY 2016-17³⁸

Financial Penalty Type	Number of CDP penalties applied
No Show No Pay	170,923
Non-Attendance Failures	172
Reconnection	2,354
Serious Failures (including Comprehensive Compliance Assessment triggered)	31,611
Unemployment Non Payment Periods	154
Total Financial Penalty Events	205,214

Penalties can be appealed and a person can receive payment pending review. There is no publicly available data about the success of reviews and appeals of penalties. A review of published decisions of the Administrative Appeals Tribunal and the Federal Court of Australia does not reveal any cases concerning appeals against penalties arising from CDP non-compliance.

35 Department of Social Services, Guide to Social Security Law 3.1.13 – Compliance Framework for Participation Payments <https://guides.dss.gov.au/guide-social-security-law/3/1/13>, Guide to Social Security Law 3.1.13.90 – Reasonable Excuse <https://guides.dss.gov.au/guide-social-security-law/3/1/13/90>

36 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM147, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio.

37 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM149, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, p. 3.

38 Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM149, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, p. 3.

WFD UNDER CDP COMPARED WITH JOBACTIVE

Activity requirements are more onerous for CDP participants than for those who participate in jobactive, the non-remote employment services program.

As outlined above, CDP participants aged 18-49 years old who receive unemployment benefits with full work capacity are required to participate in immediate and year round Work for the Dole at 20 hours per week. Although there is flexibility in scheduling activities, they are typically undertaken across 5 days.³⁹ By contrast, jobactive recipients in non-remote Australia are only required to participate in Work for the Dole after 12 months in receipt of benefits and then for only half the year.⁴⁰ At August-September 2017, 75% of CDP participants were required to undertake WFD, whereas approximately 26.5% of jobactive participants were engaged in WFD.⁴¹

The table below shows the wide gap between jobactive and CDP mutual obligation activity requirements. Although the 2018 reforms to the CDP reduced the required maximum hours from 25 to 20 per week, all participants under the CDP continue to have significantly higher activity hours. For CDP WFD participants, required hours are 1.6 times higher than for jobactive WFD participants. The situation is even graver when it comes to older jobseekers, with activity requirements for CDP participants aged 50-59 almost triple those in jobactive, and requirements for those aged over 60 six times higher for CDP participants.

MUTUAL OBLIGATION ACTIVITY REQUIREMENTS – CDP AND JOBACTIVE⁴²

Cohort	Jobactive	CDP
	Requirements begin after 52 weeks of receiving payment	Requirements begin straight after entering CDP
	Activities required for 26 weeks of the year	Activities required 52 weeks a year with 6 weeks possible leave
WFD participants aged 18-49 with full time work capacity	25 hours per week 650 hours per year	20 hours per week 1,040 hours per year 920 hours per year with leave
Participants aged 50-59	15 hours per week 390 hours per year	20 hours per week 1,040 hours per year 920 hours per year with leave
Participants aged over 60	5 hours per week 130 hours per year	15 hours per week 780 hours per year 660 hours per year with leave
Principal carer parents	15 hours per week 390 hours per year	15 hours per week 780 hours per year 660 hours per year with leave

39 CDP participants may be given up to 6 weeks leave during a 12 month period — CDP Guidelines Handbook, p. 18.

40 Fowkes, L. 'The application of income support obligations and penalties to remote Indigenous Australians, 2013-18' (Working Paper 126, 2019), Centre for Aboriginal Economic Policy Research, p. 6.

41 Ibid, p. 11

42 Emails from DHS to NSSRN dated 14 November 2019.

DISCRIMINATORY IMPACT OF INCREASE IN PENALTIES UNDER CDP

In the first year of CDP operation there was a 413% increase in financial penalties compared with the preceding remote employment services scheme, the Remote Jobs and Communities Programme (RJCP) which had less onerous obligations and greater flexibility over choice of activity.⁴³ As more than 90% of remote participants identify as Indigenous, the result of this escalation in penalties is that Aboriginal and Torres Strait Islander people receive significantly more financial penalties than other people on income support across Australia.⁴⁴

Comprehensive research into the extent of penalties under the CDP has been undertaken by Lisa Fowkes at the Australian National University's Centre for Aboriginal Economic Policy Research. Her most recent publication, published in February 2019, compares the rate of penalties under the CDP with other employment programs over the period June 2013 – July 2018. It found that the CDP drastically escalated the rate of penalties in remote areas. Between July 2015 and July 2018, the small number of CDP participants (around 30,000 people) received 53.3% of all the penalties applied overall, despite the fact that there are around 905,000 participants in other employment service programs.⁴⁵ Over the period from July 2015 to June 2018, Indigenous people received almost 60% of all penalties applied to jobseekers nationally.⁴⁶

Fowkes' research found that between July 2013 and June 2018, No Show No Pay (NSNP) penalties accounted for over 82.4% of all penalties under the remote employment services program. Of these, 94.4% of NSNP penalties were applied after the commencement of the CDP in July 2015.⁴⁷

VULNERABILITY OF PEOPLE SUBJECT TO CDP

CDP participants are more likely to experience a number of vulnerabilities. For many participants, English is their second, third or fourth language⁴⁸ and some experience a significant lack of literacy and language skills. Almost all participants do not own their own home, and a third are subject to income management.⁴⁹

Modelling by the Department of Prime Minister and Cabinet has shown that participants were more likely to receive a penalty if they had been unemployed for long periods, had poor English, had been homeless, convicted or sentenced, or lacked access to communications or private transport.⁵⁰ Department data shows that the vulnerabilities most likely to be associated with a penalty were a significant lack of literacy and language skills, being a released prisoner and drug/alcohol dependency.⁵¹ Other vulnerability types among penalised participants were psychiatric problems, illnesses requiring frequent treatment, homelessness, cognitive and neurological disorders, a recent traumatic relationship breakdown and significant caring responsibilities.⁵²

IMPACT ON NAAJA CASEWORK

Almost half of all the CDP participants live in the Northern Territory where NAAJA operates its legal services, and 93% of these participants identify as Indigenous.⁵³

Since the introduction of the CDP, NAAJA has experienced a notable increase in the number of matters concerning the CDP coming to their legal service.

NAAJA reported that in the 2016-17 financial year, approximately 20% of their social security advice and casework matters

43 ANAO, 'Design and implementation of the Community Development Programme', Performance Audit, ANAO Report No. 14, 2017–18, 31 October 2017, p. 46

44 Fowkes, L. 'The application of income support obligations and penalties to remote Indigenous Australians, 2013–18' (Working Paper 126, 2019), Centre for Aboriginal Economic Policy Research, p. 14

45 Ibid, p. 8.

46 Ibid, p. 16.

47 Ibid, p. 11.

48 Senate Finance and Public Administration References Committee 'Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)', 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report, p. 29.

49 Department of Jobs and Small Business administrative (Employment Services System) data, Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018.

50 Department of the Prime Minister and Cabinet, The Community Development Programme: Evaluation of Participation and Employment Outcomes, 2018 <https://www.niaa.gov.au/resource-centre/indigenous-affairs/community-development-programme-evaluation-participation-and-employment-outcomes>, pp. 40-42.

51 Department of Jobs and Small Business administrative (Employment Services System) data, Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Department of the Prime Minister and Cabinet, pp. 8-9.

52 Ibid.

53 Department of the Prime Minister and Cabinet, The Community Development Programme: Evaluation of Participation and Employment Outcomes, 2018 <https://www.niaa.gov.au/resource-centre/indigenous-affairs/community-development-programme-evaluation-participation-and-employment-outcomes>, p. 80.

conducted in the Darwin and Katherine offices involved assisting clients with CDP issues.⁵⁴ In preceding years, this figure was significantly lower. For example, during the 2013-14 financial year, there were no social security matters concerning the Remote Jobs and Communities Program (RJCP), the scheme that preceded the CDP until July 2015.⁵⁵

NAAJA reported that of their CDP casework in the 2016-2017 financial year, approximately:

- 20% involved making a request for review of a decision by an Authorised Review Officer;
- 26% involved a client on whom an 8 week non-payment period had been imposed

14% involved clients who were seeking assistance with DSP applications or carer's payment applications who were subject to the requirement to attend CDP activities.⁵⁶

Project Methodology

In light of the increase in legal need witnessed by NAAJA following the introduction of the CDP, the NSSRN and NAAJA (an associate member of the NSSRN) decided to undertake a research project exploring the impact of the CDP penalty system on Aboriginal and Torres Strait Islander people living in the Northern Territory (NT).

The research involved asking current and former CDP participants about the effect that financial penalties had on their financial security, ability to purchase essential goods, legal problems, employment opportunities, family life, cultural life, health and wellbeing.

An expert Advisory Group was appointed to provide advice and support to the project. Advisory Group members were appointed from academic, legal and social work practice with expertise related to social security law and policy, and Aboriginal and Torres Strait Islander legal issues.

The Advisory Group comprised:

- Judith Harrison (Senior Lecturer, Australian National University),
- Lisa Fowkes (Visiting Fellow, Centre for Aboriginal Economic Policy Research, ANU), and
- John Rawnsley (Manager of the Law and Justice Projects section, NAAJA).

The project concept and documentation was developed by NSSRN in September 2018 in consultation with NAAJA and the expert Advisory Group. The proposal documentation consisted of a proposal summary (including project timeline, statement of purpose and methodology), client questionnaire, project ethical principles and project information/consent document for clients. The project attracted the support of two large corporate law firms which provided assistance on a pro bono basis with transcribing and analysing the interview recordings and any legal research needed to support the drafting of the report.

The original project proposal envisaged that NSSRN's associate member in the Northern Territory, NAAJA, would be in a position to conduct up to 17 interviews of their existing clients who are CDP participants and have experienced issues with penalties during their bush trips planned for the period between October and November 2018. Interviews conducted by NAAJA were to be recorded on a dictaphone, securely stored and transcribed with assistance from pro bono law firm partners. The reason for recording the interviews in this manner was to minimise the extra work for NAAJA lawyers conducting interviews in addition to their existing heavy caseload.

The rationale for this research partnership was that the relationships of trust built in community by NAAJA's provision of legal services would mean they would be able to access rich stories of client experiences inaccessible to an outsider conducting similar research.

PROJECT CHALLENGES

The time taken for the necessary consultation with NAAJA and the Advisory Group to agree on and finalise the project documentation led to an adjustment of the interview schedule so that interviews which were originally envisaged to take place between October to November would not occur until later in the year. This was primarily due to the rigorous reviews of the

⁵⁴ Please note that in the 2016-17 financial year, the Central Australian Aboriginal Legal Aid Service provided legal services to Alice Springs and the central region of the Northern Territory.

⁵⁵ North Australian Aboriginal Justice Agency, Response to Questions on Notice: NAAJA submission to the Senate Finance and Public Administration References Committee Inquiry into CDP, 8 September 2017.

⁵⁶ *Ibid*, p. 1

documentation to strengthen protection of NAAJA client confidentiality, and to ensure that the project aims and methodology were communicated effectively, so informed consent could be obtained, from clients who may not speak English or be literate.

The project partners then experienced unexpected changes in the resources available at NAAJA, resulting in reduced capacity to carry out essential project activities, most critically the conduct of interviews with clients, with NAAJA losing some of the funding it needed to support the staffing and transportation costs of the project. In early November 2018, the project lost the key contact at NAAJA who had been driving the project.

It was not until May 2019 that NAAJA would conduct its first interview. NAAJA was ultimately only able to conduct six interviews with the help of the community legal education team. This experience feeds into our later recommendation about ensuring secure and stable funding of legal services in remote Indigenous communities to ensure the sustainability of activities that promote access to justice and improve the welfare of people living in these communities.

Our research also highlighted additional barriers to conducting interviews in remote communities. Many of our research participants did not have regular access to phones, or had literacy and language barriers. Many travelled away from communities during the times that coincided with lawyer visits due to ceremony or funeral business. This highlighted the need to allow additional time and resources to conduct research in remote communities.

When clients were available to participate in our research, many were eager to talk about the CDP system and penalties generally. However, some clients were reluctant to share their own stories in the form of a survey. For example, in one community no participants were willing to take the survey but a group discussion about CDP lasted for over an hour. Even where NAAJA was able to undertake interviews, the interviewees were often more comfortable talking about common problems in their community rather than describing individual experiences of being penalised.

NAAJA also found that requesting that the interviews be audio recorded dissuaded some clients from participating. For example, one potential interview was referred to NAAJA by another CDP participant. The man was interested in the study but decided not to participate because he did not want to be recorded.

In response, the project partners decided to give participants the choice of being recorded or having their story written down in note form. Being provided with this choice did appear to make participants more comfortable. For example, one woman did not want to be recorded but shared her story for transcription with interviewers for over 45 minutes.

Support for the project was variable between different CDP providers and different managers at the same work site. For example, in one remote community, NAAJA staff had two positive discussions with a CDP manager about running the surveys. However, when they returned on a later day, another manager requested additional information to send through to the central office and NAAJA was later told they could not run surveys on CDP sites. On another occasion, NAAJA staff were told they could not run surveys during CDP time. Some CDP providers were reluctant to allow interviews on or near their premises.

See Appendix 1 – Lessons learned – Initial process evaluation

Research data

INTERVIEWS WITH NAAJA CLIENTS

Interviews were conducted with six current or former Indigenous CDP participants living in remote areas of the NT about their experiences of receiving CDP penalties for non-compliance.

These interviews were conducted by NAAJA lawyers and community legal education staff during the period March to December 2019.

The Top End offices of NAAJA provide legal assistance across a wide range of remote locations, including communities in Arnhem Land, the Big Rivers region, the Central Desert, the Tiwi Islands, the Barkly region, Katherine and Darwin. The interviews were conducted in some of these communities. To protect client confidentiality we have not identified which communities specific interviews come from.

Participants in the research were identified by NAAJA lawyers and community legal educators. Participants were current or former recipients of income support who had either personally experienced CDP penalties or had family members who had experienced CDP penalties. Clients were asked whether or not they wished to participate in the project through an interview conducted by their NAAJA solicitor (via an interpreter where required) and using a questionnaire. A project information sheet and consent form was read to participants and discussed with them to ensure that informed consent was provided before any interviews were conducted.

Demographic data was not collected about the interviewees to protect the identity of NAAJA clients in communities with small populations.

Interviewees were given the option to opt-out of being recorded in order to encourage participation. For those who had their interview recorded, the audio was securely saved using the digital dictation software (BigHand) used by the corporate partners that provided pro bono assistance with transcribing and analysing the interview recordings.

The project relied on qualitative research, using thematic analysis of semi-structured interviews. The nature of this kind of phenomenological research, particularly with the small number of participants interviewed, means that the research is not intended to draw broad conclusions about the experiences of all people participating in the CDP in remote NT. Rather, it provides deeper understanding and direction to policy makers as to themes which are likely to affect similar cohorts.

INTERVIEWS WITH NAAJA LAWYERS

Another perspective on the impact of penalties was obtained from interviewing NAAJA lawyers who provide legal assistance to CDP participants. The questions sought their observations from CDP casework, including the barriers clients face in accessing legal assistance for social security matters in remote areas of the NT and client interactions with CDP Providers.

These interviews were conducted by a representative of the NSSRN in August 2019 with four NAAJA employed lawyers who assist clients participating in CDP as part of their casework load.

The lawyers' level of legal practice experience ranged from 3 to 7 years, with 5-10% of their caseload at NAAJA being specialist social security legal work.

The lawyers were provided with a sample questionnaire that set out the interview questions before the interviews were conducted. The questionnaire was informed by the observations and trends drawn from the initial client interviews. Lawyers had the opportunity to provide feedback on the questionnaire before the interviews, and were able to raise other issues of significance in the course their interviews, which were conducted informally.

The responses of the lawyers were recorded through handwritten notes taken by the interviewer.

The lawyers were informed that their contributions would remain anonymous and that the report would acknowledge that the interviews captured the personal views and observations of the lawyers, rather than the position or views of NAAJA.

Research Themes

EMPLOYMENT OPPORTUNITIES

Clients expressed a consistent desire for paid employment. However, it was noted that there is a gross lack of paid work opportunities in community. In some communities, there is only one potential employer, but no current work opportunities. Some clients said they believed that previously available paid work opportunities have been replaced with CDP activities. This aligns with the evidence of the Aboriginal Peak Organisation of the Northern Territory that many of the jobs undertaken as part of WFD were 'real jobs' in health, community services and education sectors that should take the form of regular, paid employment.⁵⁷ It has been reported that the supply of lower-paid labour from CDP has resulted in a number of positions being diverted from mainstream, higher paid employment to CDP participation.⁵⁸

In communities where there are more options for paid work, this work is often contract based and temporary. One client (C1) spoke of contracting work to do gardening with the local shire council. However, this work was also affected by the seasons, and there was less outdoor work available in the wet season.

Some clients (C4 and C5) said they were led to believe that after three months on CDP they would have paid work opportunities which did not eventuate.

"You have to turn up work every day so you get good amount. 'You work for 3 months and then you get job.' I've been working here long time. I'm still waiting for the job." (C5)

57 APONT Submission 37.1, p. 16 cited in Senate Finance and Public Administration References Committee 'Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)', 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report, p. 61

58 Mr Cameron Miller, CEO, Ngurratjuta Pmara Ntjarra Aboriginal Corporation, Proof Hansard, Alice Springs, 28 August 2017, p. 3 cited in Senate Finance and Public Administration References Committee 'Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)', 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report, p. 47

C4 described frustration and growing distrust across his community towards CDP providers because of this false expectation of work after 3 months of CDP participation. He identified this tension as a reason for people to skip activities:

"They angry to Centrelink. They don't like doing activities. They want to get paid job." (C4)

Participants described feelings of being demeaned by being asked to do "activities like children" as opposed to having paid work:

"The word "activities", they don't like. It's what kids do. We've got a bus. They don't like the bus. Like going to school. They feel embarrassed. That's why they don't come around. Activities, that's kids' job.

In the Aboriginal community, Aboriginal women don't like to be put down. Aboriginal men don't like to be put down." (C4)

NAAJA lawyers have observed that the dashed hopes of having paid work after three months were affecting their clients' mental health.

"Client was very excited to be working in a take away shop and understood that it would lead to paid employment. Client was very downtrodden when it did not lead to a paid job. His mental health was badly affected." Lawyer B

Training to develop skills does not help when there are so few paid work opportunities.

"I'm still waiting for a job but no job. I've got licence, white card. I've got certificate." (C5)

Clients said that if paid work was available they "would love it" and be motivated to attend work. The lack of paid work has a detrimental impact on well-being.

"It's good going to work. You feel alright. When you home by yourself, you stay home, you drink too much." (C5)

NAAJA lawyers have observed there are generally very limited opportunities for paid work. The jobs that do exist might include jobs at the local store, the council office, service provide programs and projects, or at the arts centre if there is one. However this only provides jobs for a limited number of people in each community and, since jobs are often casual, seasonal or time limited, the work is precarious with little or no job security.

The limited number of paid work opportunities means people in are reliant on income support for their livelihoods and have no option but to participate in the CDP. This is concerning in light of the views of interviewees that CDP has replaced some paid work opportunities, and the observations of NAAJA lawyers that the work being done by CDP participants as "activities" should really be work that they are paid a fair wage to do.

"For example mowing grass in communities and picking up rubbish – all tasks that the council should be paying people at least a minimum wage to do." Lawyer A

In other instances CDP workers have been observed by NAAJA lawyers working alongside paid employees, and performing the same tasks, including night patrol work, cleaning people's yards with paid council workers, a housing refurbishment project managed by a contractor, working at the takeaway shop and at a shop stacking shelves.

"A few people have said to us that doing activities and getting Centrelink in return is like the old days where people were living on rations in return for their work. People are not getting a fair wage for the work that they are doing." Lawyer A

CDP participants who are required to do the full number of activity hours are working for an amount which ends up being well below the minimum wage. They also do not receive any superannuation payments for this work.

"People approach NAAJA for advice on getting early release of super payments thinking that they are getting paid super for their CDP activities. This causes a lot of distress to people when they are advised that they have not been paid super." Lawyer B

Some of the CDP work activities that interviewees described included gardening (C2, C1, C3), cementing (C1) and picking up rubbish (C3). NAAJA lawyers have observed that the type of work conducted under CDP can vary. Women are often given art and crafting activities like beading, painting, weaving, making necklaces and other jewellery, painting, making textiles and clothing. Men are often tasked with manual labour such as mowing people's lawns, picking up rubbish, cleaning grave sites, fixing fences and working at Men's Shed (making art, fixing vehicles and doing woodwork).

While one person said that he liked being part of the community work team and making the community beautiful, the overwhelming sense from the participants and lawyers interviewed is that many CDP activities are meaningless and pointless.

"Activity for the sake of activity. For example, being asked to pick up rubbish where there was no rubbish. Being asked to collect rubbish in an area where it has already been cleaned is very demeaning and unproductive." Lawyer B

"From speaking with the people from the communities that I travel to, there is a strong sense that CDP is unfair and will ultimately not assist participants to gain employment. People consider the activities to be pointless – not useful, skills building activities – but more 'busy work'. People don't consider that they are learning anything." Lawyer A

One of the lawyers' clients had significant health issues but was required to do manual welding work. He told her that he did not think the fumes were good for him as it made him feel dizzy. He was quite a large man and struggled with outdoor activities. In addition to the problematic nature of 'busy work' not leading to employment, this raises the issue of compliance with health and safety standards.⁵⁹

"The CDP is sold to people as employment pathway but in reality there are no jobs. There is no pathway. CDP is not going to help people to get jobs. Some people feel that they are being forced to do something not good for them." Lawyer C

"Don't know of any specific instances where the CDP activity led to paid work." Lawyer B

Disengagement from the CDP program needs to be understood in the context of the meaningless, and in some cases onerous, nature of some of the work CDP participants undertake. The supply of cheap labour under the CDP also has negative impacts on local labour market opportunities.

"People have become very disillusioned with the system as it has not brought jobs." Lawyer D

RECOMMENDATION 1: Employment opportunities

- a) *Increase opportunities for paid work in remote areas.*
- b) *Drawing on the APONT model, fund the establishment of at least 12,000 new jobs at award wages in remote communities to be wholly, or predominantly, created in Indigenous community organisations.*
- c) *Provide a genuine pathway to paid employment with meaningful activities that build employment skills.*

IMPACT OF PENALTY PERIODS WITHOUT PAYMENT

Some clients reported that they are able to manage their day to day finances on their regular income support payment. However, when penalties are applied clients reported being unable to pay for food, baby food, rent, power, fuel and other bills.

In particular, food security was raised as a significant issue, with some clients reporting that they go 'hungry' when they experience penalties.

"Yeah, I run out of money. Happen when I got penalty. I don't save money for next time. Money goes like water... No money for food, baby food, baby wipes for son – he 6 months old. Can't pay back loan to family." (C5)

There is a lack of cheap food and groceries available in many communities. Often there is only one community shop which is very expensive. Many clients travel to other towns where there are cheaper food options. One client (C2) travelled over 55km to get food with her family. The grocery options in this next town are cheaper and allow for the family to purchase food and goods in bulk. Our client reported that to travel there the family needed enough money for fuel in the car, and the penalties affected their ability to pay for fuel.

Some clients said they ended up disengaging with the system altogether and would "stay at home with no money" preferring to rely on family than have to deal with the activities and penalties. Other clients described that the distress caused by penalties meant that they didn't have the capacity to look after family.

⁵⁹ See above 'CDP and WFD' p.10

"Yeah – very hard to help and support them especially someone old, elderly, sick. Many need help from those other families to help support the family." (C6)

"You don't feel alright so you can't look after family." (C5)

Penalties often led to conflict within the family.

"[I'm] stressing out. My partner tell me "why you get short money?" It's a problem. Why? Because I didn't turn up one or two days. Money goes down." (C5)

"They gotta have money. I'm sure they get frustrated, starting family argument. 'How come you don't pay this? Where's the money?'" (C4)

"When people are cut off payments, they rely on family members, placing strain on relationships and causing money disputes, leading to more domestic violence which frequently ends up with people coming into contact with the criminal justice system." Lawyer D

This tension can also spill over into the wider community.

"Some young boys, they trouble. They pick on people for nothing. Because they got no money." (C5)

"After families' CDP money is cut off there is no money for food and it affects children's school and behaviours. The reason [for those problems] is that money has been cut off." (C6)

"Increase in break ins, I'm aware of instances where people [cut off from payment] have broken into service providers and taken food. People are hiding food in a locked box to try to prevent people coming in and asking for food." Lawyer D

Humbugging was also identified as an issue, with family pressure to provide money and family fights over money.

"Some of the elders are much savvier than the young people and get upset with young people get cut off and humbug them for money. This causes family tension when less money is available for the community." Lawyer C

"We share money because we are Aboriginal people. We are related to each other and everything. We say 'don't be greedy, share everything and don't be greedy'..."

Humbug – Not good, especially if you've got your own family to support and others around you rely on you for money. Share money because we are family but sometimes there is nothing." (C6)

The only source of income available for most of NAAJA's clients are their payments from Centrelink. There is insufficient employment and alternative means of support in remote communities, and so it is not unusual for individuals and their extended family to all be reliant on Centrelink income. Given that the allowance from Centrelink is minimal, many social security recipients are already in financial hardship. Indigenous Australians living in remote communities already experience significant and growing income disadvantage, with Indigenous cash poverty rates rising from 46.9% in 2011 to 53.4% in 2016.⁶⁰ When penalties are applied and payments suspended or cancelled, poverty is further entrenched.

"There are high rates of illness and disability in remote communities. Many clients have significant caring responsibilities, both because of Aboriginal kinship systems and because financial hardship often necessitates being reliant on others to care for family." Lawyer A

"Reduced and no income causes tensions within families as people become dependent on other family members who often are solely reliant on income support." Lawyer B

Clients also reported that the penalties associated with the CDP program have a negative impact on their ability to find paid work.

NAAJA lawyers observed the significant impact of penalties on the health and well-being of clients, particularly mental health. Clients pointed out the anxiety that penalties create.

"Community health is free but sometimes worrying about money can make people sick." (C6)

One client described a downward spiral of feeling demotivated by the nature of their required activities, not attending those activities, being at home feeling frustrated and stressed and self-medicating with alcohol.

60 Markham, F. and Biddle N. 'Income, poverty and inequality', CAEPR Indigenous Population Project, 2016 Census Papers, Paper no. 2, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2018

"You don't turn up to work. And you've got problem with clothes, no uniform, sometimes lazy to come to work. Sometimes problem with family, fighting going on. Too much drinking, all night." (C5)

Most penalties that NAAJA lawyers see are No Show No Pay, which is not surprising given the combination of high activity requirements, participant vulnerability and the immediate application of NSNP penalties. However, many clients will have also incurred serious penalty failures which then led to payment cancellation and NAAJA assists them to reapply for payments.

NAAJA lawyers have observed that CDP penalties have a devastating impact on their clients. Whether they are serious penalty failures, payment suspensions, or payment cancellations, the loss of income support causes automatic deductions, like rent and other bills, to be cut off. This results in people falling into debt very quickly and places them at risk of eviction, especially where it is unclear whether they remain eligible for public housing when they don't have an income.

"Very hard. You pay every two weeks. If you attend [CDP] everyday your money increases. People can't pay phone bills and other bills and they are referred to debt collecting companies." (C6)

One client said she was very scared when money was no longer coming in. She was caring for a child and relying on her payments to buy food.

"Food is very expensive. When penalties are applied, people don't know what has happened and when their money will come back. The financial uncertainty that penalties cause is very debilitating for people." Lawyer B

"Not having enough food can lead to child protection issues". Lawyer C

"I'm aware of situations where children have been removed from a client's care after they have been cut off payments." Lawyer D

"The penalties are unreasonably harsh, leading to the ultimate outcome of CDP which is that it further entrenches poverty." Lawyer A

BARRIERS TO COMMUNICATION AND INACCESSIBILITY OF TECHNOLOGY

Many clients reported not owning a personal phone (landline or mobile) or a computer. Those who do have a phone find that they are often disconnected for long periods. In some communities there is no mobile phone reception.

Many of these clients either have intermittent access to a shared phone or rely on the use of a public community phone. One client (C2) observed that the only phone available was the pay phone at the shop.

C2 reported that when her payments stopped, the only way she could find out what was happening with her payment was to use the pay phone and call Centrelink. She had not received any communication from Centrelink notifying her that she had received a penalty or that her payment was stopped.

In communities where mobile internet access is available, clients have previously reported to NAAJA that using MyGov was using up a lot of their data.

NAAJA lawyers explained that many of the clients do not have access to postal mail either. This can be a result of remoteness, language barriers or low levels literacy. Picking up mail often involves going to a council office, meaning it is often not received. For some clients, even if they do receive their mail, they are often unable to read it because their primary language is a language other than English.

"To collect mail they need to show ID to the Post Office and there are lots of issues with people not having ID. ID may not be in the right name or a slightly different name." Lawyer D

In some communities there is no access to mobiles, pay phones or wifi, meaning that there are no communication technology options.

"People get sick a lot and often don't have the technology to notify." Lawyer B

In communities where there are some channels of communication, seasonal weather can interfere with this, particularly during storms in the wet season when the dirt roads can be impassable and too dangerous to use. For example, the wet season in early 2018 brought monsoonal storms to the Tiwi Islands north of Darwin, causing damage to a Telstra tower and interfering with residents' access to fuel, internet and phones over a 3-day period.⁶¹ One client (C2) observed that when there was no phone reception, there were no alternative means of communication.

61 Zillman, S. 'Wet season storms highlight communications weakness on Tiwi Islands', ABC News (online), 7 February 2018, <http://www.abc.net.au/news/2018-02-02/storms-highlight-welfare-card-vulnerabilities-on-tiwis/9387250>

"Most people don't own cars. Even if they do, the road out there can be pretty rough, and in wet season, can get blocked off completely." Lawyer A

Lack of access to communication technology also impacts clients' ability to access legal help to resolve CDP issues. In the Katherine region, NAAJA only has the resources to travel to the 12 surrounding communities once every 2 months given the long distances. Bulman, for example, is a 4 to 5 hour drive from the NAAJA office in Katherine.

"Apart from potentially using the phone at the council office or, if they had one, calling us on their landline, the only way of speaking to a lawyer was either waiting for NAAJA to attend, or driving all the way to Katherine." Lawyer A

Even if people needing assistance wanted to drive for the hours required to see a lawyer, most people do not have cars. The few people who own a vehicle often cannot afford to buy fuel.

NAAJA lawyers explain that their ability to assist clients with CDP matters is also affected by the communication obstacles in the communities they work in.

"People often will only know that their payment has changed or stopped. Communication issues (no device to access My Govt and not getting letters from Centrelink etc) mean that people have very limited or no information about what has happened. With the exception of Wadeye which has a Centrelink office, there can be significant delays in progressing matters due to the need to talk first with Centrelink about what is happening and then not being able to get further instructions from the client." Lawyer B

ISSUES WITH CENTRELINK SERVICE DELIVERY

When clients are able to access a phone or computer to make contact with Centrelink, they experience further barriers to communication.

One client (C2) observed that Centrelink call wait times can be an hour or more. Others said they wait on the phone all day. One client described calling Centrelink as:

"Hard. Make you talk all day, waiting on the phone. Put you on hold. Talk to the other... participation team." (C5)

NAAJA lawyers have observed similar issues with call wait times in the communities they work in.

"For many of our clients, there is no effective way to contact Centrelink. There is no Centrelink agent in this community and wait-times on the phone are lengthy, at times up to 4 hours. NAAJA hears reports of clients spending 8-9 hours on the phone to resolve a payment issue." Lawyer A

Given that English is often the second, third or even fourth language of the CDP participant,⁶² it is vital that interpreters are used by Centrelink staff and participants when needed.

One client (C2) described a typical telephone interaction with Centrelink where she attempted to ascertain the basis of her payment suspension as:

"when we call back again, they making hard for us... they talk really hard... we don't understand that English." (C2)

This client also disputed the reason why the penalty was applied – claiming that she had attended her job activity requirements. Rather than being given information about disputing the suspension, she was told by Centrelink to wait a few days.

"They always tell me... if you want to get your pay, leave it to tomorrow or next day." (C2)

Clients who did have the assistance of an interpreter said it made their communication easier. One client (C1), who uses his family phone to make calls, said he finds it easy talking to Centrelink on the phone.

NAAJA lawyers have observed that the whether or not a client will have access to an interpreter is variable.

"Use of interpreters can be patchy. It often relies on clients being proactive and asking for one rather than Centrelink being proactive and asking people if they need an interpreter." Lawyer B

"Interpreters may theoretically be available but there are lots of issues around accessing the interpreters. To access additional services like interpreters adds significant delays in getting the services required, resulting in clients being on hold to Centrelink for excessive amounts of time. Needing an interpreter can add an hour or more to wait time." Lawyer D

⁶² Senate Finance and Public Administration References Committee 'Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)', 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report, p. 29.

Centrelink staff who are the first point of contact when payment has been stopped due to CDP penalties bear the brunt of CDP participants' feelings of frustration with the CDP program and their desperation about having no money to live on. One client (C5) described how he:

"Got angry for that money. On the phone every minute trying to get them to put that money back. And they said they can't. You've got to get work." (C5)

Other clients said they felt shamed by their interactions with Centrelink. These interactions can only be fully understood in the broader context of colonisation. Some clients expressed feelings of being patronised and distrusting Centrelink, and did not want to be told what to do by white fellas.

"Hard. Hard issue. Stay home, no clothes, no food, problems with family. [They use] shame word. Keep on telling you to come to work." (C5)

Face to face service is especially important for communication when language/culture is an issue. NAAJA lawyers have observed that the community's relationship with Centrelink is best when there are local people in the Centrelink office.

"Local people generally have good rapport with clients, clients feel comfortable talking with them, and they are communicate to clients in a way that clients understand... Centrelink's relationship with the community can significantly vary where there are not local people in the office." Lawyer B

"Local employees of Centrelink offices are very effective because they live in and know their community. Flying Centrelink worker in is often not effective because they don't have the local community knowledge and don't speak the local language." Lawyer D

Centrelink decisions impact on payments people rely on for their basic needs, like food, medicine and shelter, so it is essential that these decisions are made with a clear and full understanding of the person's circumstances. Effective communication between Centrelink and the over 80% of CDP participants who are Aboriginal and Torres Strait Islander peoples relies on human interaction. Ensuring that Centrelink staff develop genuine cultural competency and use interpreters is therefore a key consideration.

Given the importance of a proper assessment at the Employment Services Assessment and Job Capacity Assessment stage and at the Comprehensive Compliance Assessment stage, it is vital that Centrelink makes these assessments taking into account all the person's circumstances. If Centrelink has assessed someone as having full time obligations, CDP providers have no option but to put them in full-time Work for the Dole. Without proper assessment and communication between Centrelink and providers, unfair decisions can be made without any accountability from the appeals process because the person's actual circumstances remain invisible to the system.

"Centrelink communication is often too complex and doesn't recognise clients often have low literacy. Clients report great difficulties trying to communicate with Centrelink over the phone. Very long waiting times – can be on the phone all day. Even if they get through to Centrelink, clients report that they don't feel understood and don't understand what Centrelink is saying.

Don't think that there is much take up by Centrelink in using interpreters. Very concerning given that Centrelink is having conversations with people about the circumstances that led to penalties, cancellations, suspensions etc. Centrelink cannot expect that vulnerable people are going to be able to advocate for themselves and ask for an interpreter.

People often don't understand that they have appeal rights and can challenge Centrelink decisions. Centrelink argues that they advise people of their appeal rights in their letters. However this does not recognise that clients often don't get their letters or if they do they don't read them (due to low literacy levels) or if they do read them the letters are too complex to understand." Lawyer C

Conflicts and health issues in communities create circumstances where it would be appropriate for Centrelink to grant an exemption. However, clients reported that they were not being granted exemptions when there was a family or health issue relating to fighting or alcohol. As mentioned earlier, people are often unwell and do not have a reliable channel of communication to report their inability to undertake activities. NAAJA has assisted very vulnerable people with serious health issues to obtain exemptions and in some cases apply for Disability Support Pension. In many of these cases, the CDP participants have had to subsist without income for a significant period of time due to not being granted an exemption.

"People often complain to us about the CDP program not taking into account the issues that they face with engaging with the program. For example, their family responsibilities, the impact of their health on their ability to participate." Lawyer A

Other examples of issues giving rise to penalties for which exemptions may reasonably have been granted include:

“Attendance at Sorry Business which took longer than anticipated. Client was penalised once the exemption period had ended.

Message not getting through to CDP provider that client could not attend.

Health reasons – no way of contacting CPD provider other than walking 20 minutes in hot sun. Too unwell to do the walk. Unable to attend due to being involved in a car accident on a dirt road.” Lawyer B

RECOMMENDATION 2: Centrelink service delivery

- c) *Further develop practical cultural awareness training to assist Centrelink frontline customer service and compliance team staff members to better understand the context in which they are working.*
- d) *Place the onus on Centrelink at the outset to ask CDP participants whether their primary language is a language other than English and whether they would like an interpreter to be provided, rather than on the CDP participant to ask for an interpreter. Centrelink should note the response on file for future communications.*
- e) *Increase resourcing to improve access to face-to-face Centrelink services, staffed with local people.*

COMPLIANCE WITH ACTIVITY OBLIGATIONS

NAAJA clients often have cultural obligations, such as attending ceremonies or funerals, and participating in sorry business. Families can be on country for extended periods during school holidays. The small sample of clients that we interviewed did not have difficulties with having a cultural event, court appearance, or sorry business considered by CDP providers as a reasonable excuse for non-attendance at a required activity. However, there are other situations where a reasonable excuse was not identified or the discretion not to recommend a penalty was not exercised.

Several clients identified scenarios where penalties were imposed in circumstances where they were unable to return to their community in time for work activities. This often occurred when clients moved between communities to attend cultural events or buy groceries, and they had no transportation option to return.

“You can’t get penalised for that. I tell this supervisor, funeral day. That’s our culture...If you stuck in Darwin, you get penalty.” (C5)

One client (M4) described travelling 640km for sorry business back to her country. Centrelink provided a grace period of two weeks, but she could not return in time, and had not updated her address to enable her to do CDP there. She was penalised for this failure to attend.

Another client (C3) described travelling between 60 to 190 kilometres to other towns to visit family and buy cheaper food. She described missing her lift home, resulting in penalties for not showing up to work as her situation was not considered to be a reasonable excuse.

NAAJA lawyers have observed some inconsistency in Authorised Review Officer (ARO) decision making, with some AROs finding that even though there was a reasonable excuse, the appeal was unsuccessful on the basis that a person should have provided the reasonable excuse prior to their absence but others accepting a reasonable excuse after the event.

As with Centrelink, the relationship with CDP Providers needs to be understood in the cultural historical context. Lawyers from NAAJA have observed that people see their CDP boss as controlling them through a job schedule that is based on a Western cultural framework and does not provide the flexibility necessary to take into account cultural differences.

“One client stated that he was being treated like a slave and was being controlled by the CDP provider. He was not getting paid a fair wage for the work he does.” Lawyer B

The March 2019 reforms included a move to the use of Indigenous CDP Providers. This may have improved the situation, however further research is required as some of the interviews that inform this project took place before the changes were fully implemented.

RECOMMENDATION 3: Compliance with activity obligations

- a) Reduce the number of hours which CDP participants must complete in order to comply with activity obligations so that, at the very least, they are no longer required to undertake more hours than jobactive participants.
 - b) Building on the 1 March 2019 changes, provide more flexibility and discretion to CDP Providers to excuse non-attendance in a broader range of circumstances with particular awareness of cultural considerations; for example, confirming that CDP participants can advise of a reasonable excuse after the event.
 - c) Include as part of ongoing cultural training and guidance to Centrelink staff more information about the range of circumstances where it would be valid to grant an exemption and update policies accordingly.
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QUALITY OF CDP JOB SERVICE PROVIDERS

The quality of service provided by CDP Job Service Providers and their understanding of both the client and the rules has a huge impact on whether payments are cut off due to penalties. There are early reports that the move to Indigenous CDP providers as a result of the March 2019 reforms has led to some reductions in penalties. However, the full impact of these changes is not captured in this research as some of the interviews took place before the changes had been fully implemented.

One client (C2) described how under a previous provider she received many penalties but always receives full pay when working with her current provider.

Others expressed a similar view that the provider has an impact on whether penalties are applied or not. Some providers are proactive in calling people who fail to attend work. For instance, one client (C1) reported receiving information via a phone call or in person about any decision to stop payment which has helped to facilitate them claiming a reasonable excuse.

"They don't have problems with [Job Provider]. They pretty easy. All you gotta do is put in a leave form." (C4)

NAAJA lawyers have observed that the quality of service provided by CDP providers varies across the communities they work in.

"Depends on attitudes and approaches of different CDP providers. Largest influencing factor is their understanding of the community, people's families and cultural issues. CDP providers really invested in the community and likely to be more proactive understanding a person's family and other circumstances and reasons for non-compliance and where exemptions are required." Lawyer C

"No one has been happy with the program, but I understand indirectly that people in Arnhem Land appear to have a better experience. Some CDP providers are better than others." Lawyer A

In the case of one CDP provider, clients reported to NAAJA that they had tried to contact the provider but could not leave messages because the message bank was full.

The outcome of some providers having a poor understanding of their clients and the rules is that a reasonable excuse is not identified, or discretion is not exercised, and penalties are applied for non-attendance in circumstances where they should not be.

The CDP Framework documents place an obligation on CDP providers to contact clients before imposing a penalty. However, documents obtained under Freedom of Information by NAAJA reveal that some CDP providers only make cursory attempts at contact – for example, one provider justified a penalty with the standard text "No mobile, Could not contact".

"CDP are usually not proactive in trying to make contact with people. For example, in communications where clients don't have phones, the CDP provider could go to the clients' home or otherwise track them down through other community members." Lawyer C

"Depending on the provider, the range and volume of penalties can vary a lot. A very good provider can smooth over deficiencies in the system. Some providers are very good at coming up with effective ways to work with people, for example chasing people down, while other providers can take a very punitive approach." Lawyer D

NAAJA lawyers also reported that CDP providers were inconsistent in their application of penalties when they are notified of a reasonable excuse after the event of non-compliance.

"Some will still apply penalty, others won't. People generally know that if they don't turn up for an activity they might not get their money, however are often confused about what they need to do if they are unable to attend, for example, because of illness. People think that it is okay to tell the CDP provider after the event." Lawyer B

As recommended in the section above, it would be preferable if this policy could be clarified to confirm that CDP Providers can accept CDP participants advising of a reasonable excuse after the event.

NAAJA lawyers observed that the quality of the CDP providers also impacts on the mutual obligation requirements that CDP participants are subjected to. Some have inappropriate mutual obligation requirements which increase the likelihood of non-compliance and penalties.

"It often seems to come down to the CDP provider, and even coordinator in the particular community, and how alive they are to factors that may be impacting a person's ability to participate, and also how the CDP program is set up and running in the community. I have heard that in some communities, people are given some useful and skills building tasks, such as building furniture. From my experience, in the communities that I travel to however, there is sometimes not even a CDP coordinator in the community fulltime, and there is almost nothing for people to do. That seems to really impact people's engagement and the problems that arise." Lawyer A

"Circumstances are such that they should either be on a lower activity requirement, or be exempt from activities, or perhaps shouldn't even be on Newstart and instead on the disability support pension." Lawyer A

It would be beneficial if CDP providers had the cultural understanding and flexibility to develop job plans that target real barriers to employment and take into account the needs of participants, including referring them to more appropriate payments. For example, NAAJA lawyers have observed that a low level of English language proficiency is one of the biggest barriers to obtaining a paid job.

"English should not be a barrier to getting a job. Greater support and assistance needed to help people reach higher levels of English." Lawyer B

"Government view of CDP is that 'This is your work and you should treat it as a job'. This view does not reflect the reality of clients' lives." Lawyer C

As identified earlier in this report, a job schedule which is based on a Western framework does not take into account cultural differences and sets CDP participants up to fail. There are encouraging reports that with the move to Indigenous CDP providers more flexibility is being introduced into job plans.

"More flexibility should be provided to enable hours to be split (eg ability to work half days or spread hours over a longer period) to accommodate cultural practices/responsibilities, family responsibilities (caring for children, elderly people), informal caring arrangements etc." Lawyer B

As with Centrelink, effective communication is vital to ensuring that accurate and fair decisions are made by CDP providers. However, CDP participants often have very limited understanding of what is in their job plans as the job plans are not written in a language they understand, plain English is not used and there are low levels of literacy in many communities. Having local people working in those roles, demonstrating cultural awareness and using interpreters improves the likelihood of effective communication.

"While CDP providers are usually in the community, so that the issues with access are not as great as with Centrelink, there are still issues with failure to use interpreters. People do not have great awareness of requirements set out in their job plan due to low levels of literacy... People appear more comfortable with CDP providers when there are local people. People are often okay to talk directly with a local CDP provider about why they won't be able to attend." Lawyer B

Like their clients' experiences of CDP providers, NAAJA lawyers also reported highly variable experiences with CDP providers. Some reported that CDP providers were helpful in interactions where NAAJA was trying to resolve client issues and find out what has happened with their clients' payments. The better CDP providers seemed to know their mutual clients and have an understanding of what was happening in their clients' lives. However, high turnover of CDP provider staff means new staff are constantly re-familiarising themselves with the rules and client base, and re-establishing relationships with clients and their lawyers.

“Recently, for the communities that I travel to, the CDP providers have all changed – was with the local council and now transitioned to Aboriginal corporations. This was a result of the 1 March 2019 changes.” Lawyer A

The following case study illustrates all the issues outlined in the above sections and demonstrates how the lack of a proactive approach from a CDP provider compounds problems with Centrelink service delivery, resulting in vulnerable people falling through the cracks.

One client had reapplied for payments himself about 6 weeks after a serious failure and got himself back on payment. However, he was then cut off again and had given up on the system. He was off payment for about 5 months before he received assistance from NAAJA who helped him to reapply for NSA as well as DSP. He was later granted DSP. He was struggling to comply with the activity test requirements due to serious health issues including heart problems and an acquired brain injury. He was very confused by the whole system and what he was required to do. As a consequence of his payments being cut off, he was relying on family for support. He had one family member who was working who was also supporting him. He went out hunting and survived that way. He spoke to the NAAJA lawyer about how difficult and stressful it was for him and how he had lost motivation to do other activities, eg take his children on fishing trips. The system could have responded much better to his circumstances. The CDP provider ought to have been alert to the fact that he was constantly not attending and getting penalties and referred him to Centrelink for further assessments. Centrelink also should have been proactive. There was information on his Centrelink record noting that he had health issues and serious barriers.

The system places the responsibility on people to be proactive, go to the Health Clinic and try to explain to the Health Centre what was going on and get information from them, rather than asking the CDP Provider/and Centrelink to take a more proactive approach to actively assisting and supporting people to get the relevant medical information to at least get them exemptions. As a result of not adopting a proactive approach, vulnerable people are falling through the cracks in the system.

NAAJA lawyers have summarised the issues they see with how providers work in remote communities as including:

- *Low cultural awareness*
- *Limited understanding of barriers affecting engagement*
- *Conservative views on what is a reasonable excuse for failing to comply*
- *Conservative views on when it is reasonable to not give prior notice*
- *Poor attempts to engage with people not complying, or to understand their vulnerabilities” Lawyer B*

RECOMMENDATION 4: Quality of CDP providers

- a) *Increase control over CDP providers by locally controlled Indigenous community organisations to effectively monitor and evaluate the performance of CDP providers and ensure that the quality of service provision does not rely on the highly variable quality of service delivered by each individual provider.*
- b) *Assess the performance of CDP providers including criteria which measures their success in:*
 - i) *Genuinely taking into account participants’ barriers to engaging with the provider and Centrelink.*
 - ii) *Providing a culturally sensitive and safe service.*
 - iii) *Ensuring the safety of program from a health and safety perspective.*
- c) *Require CDP providers to undertake cultural awareness training and demonstrate understanding of the above obligations.*

UNMET LEGAL NEED AND UNDER-RESOURCING OF COMMUNITY LEGAL SERVICES

Unmet legal need in relation to the CDP Program is occurring against a backdrop of under-resourced community legal services across the Northern Territory. NAAJA reports that common legal issues experienced by their clients include No Show No Pay penalties, serious failure penalties and cancellation of payment due to alleged persistent non-compliance. Despite data showing a dramatic increase in the number of penalties imposed and payments cut under the CDP scheme, NAAJA's caseload has only increased slightly in this area. This indicates that CDP participants affected by penalties are unaware of their right of appeal.

NAAJA lawyers have observed that many CDP participants do not understand the system and, when penalised, do not realise this is a legal issue they can ask a lawyer to help them resolve.

"Social Security is one of the biggest areas of unmet legal need. People often do not actively seek NAAJA assistance with Centrelink issues. Clients often feel disempowered due to the complexity of the system." Lawyer D

NAAJA lawyers may only find out that a client has a CDP issue when they are proactive about asking how their CDP participation is going. The clients NAAJA sees will often present with a long history of penalties without actually knowing they have been penalised, thinking they have been mistakenly paid less or missed payments.

"People didn't understand that they were being subjected to penalties or the basis for Centrelink decisions. People often say they haven't got their pay or had a short pay rather than think in terms of that they have got a penalty which is unfair." Lawyer C

This aligns with the findings of the LAW Survey about the lack of awareness in the general Australian population about what constitutes a legal issue, especially amongst disadvantaged groups such as people with a primary language other than English and people with low education levels.⁶³

"There is also widespread confusion about the existing CDP system, particularly as to the payments and penalty components. The frequency of changes to the remote work for the dole policy and legislative framework, as well as the lack of effective communication about participants' rights and obligations, is a major contributor to this confusion." Lawyer A

In addition to the lack of awareness, barriers to accessing legal support are compounded by the broader disadvantage many CDP participants experience.

"Reality of people's lives and a poor system – they often just make do and are focused on trying to meet their daily immediate needs. Legal matters take a back seat to immediate issues, family and cultural matters etc." Lawyer C

"Low levels of financial literacy... creates additional barriers to people getting the help they need." Lawyer D

NAAJA lawyers observed that community members had a much higher opinion of the previous Community Development Employment Projects (CDEP). CDEP had more favourable rates and a greater ability to 'top up' their CDEP wages. Participants in the CDEP could undertake paid work in the hours they were supposed to be meeting their mutual obligation requirements without losing their CDEP wages. This meant they could receive additional income from self-employment or other commercial opportunities.⁶⁴

Confusion around the current CDP is exacerbated by the transition from the CDEP not being accompanied by adequate public education about the changes, in particular the introduction of more intensive compliance measures that began to operate nationwide at the same time as the CDP.⁶⁵

"CDP introduced a penalty regime which was accompanied by appeal rights, but people didn't understand the new system. So much confusion. Recently a client attended a comprehensive compliance interview – he had no understanding as to

63 Coumarelos, C., Macourt, D., People, J., MacDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney, 2012, p. 210.

64 Jordan, K. 'Submission to the Senate Standing Committees on Finance and Public Administration', Inquiry into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP), May 31 2017, <https://www.apf.gov.au/DocumentStore.ashx?id=30d0c0cf-6f2d-4346-a17f-290e1ce5f310&subId=512025>

65 Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014.

why the interview was happening and its purpose. Level of comprehension around CDP very low. Literacy levels very low. No public education campaign around CDP.” Lawyer C

“People often don’t understand when they get penalties and therefore don’t seek legal advice. Others think it is a rotten system and there is no point challenging them.” Lawyer C

Addressing the lack of community knowledge about what constitutes a legal issue, and how to resolve it, would require significantly more resources than currently exists within the community legal education team at NAAJA.

NAAJA has made efforts to proactively engage CDP participants about the penalty appeals process, but no longer receives the funding required to resource a specialist social security rights unit. That funding was attached to the Intervention and ended in 2014/2015.

“Loss of the specialist Social Security Unit in NAAJA has been felt across the civil law team. It has removed the specific focus on Centrelink issues. There is no longer a coordinating role to respond to systemic Centrelink issues and to keep other NAAJA lawyers up to date with development in Social Security law... Prior to the loss of the unit, NAAJA was able to do specialist Centrelink clinics in public spaces which resulted in a huge increase in clients approaching NAAJA lawyers for assistance with Centrelink matters.” Lawyer D

“When CDP first came in, it was around the end of funding for NAAJA’s specialist welfare rights program. NAAJA identified that this issue was going to be a priority and agreed to be proactive in discussing the CDP with clients from an education point of view. Initially a simple template was developed to capture the client story to submit for an ARO review. However, after starting to use the template, we quickly realised clients had very limited understanding of what happened. Appeals were not successful due to not being able to obtain a detailed explanation from the client as to what happened.” Lawyer C

Even when clients have been able to access legal help from NAAJA, they often do not achieve the outcome they would have achieved if NAAJA had the resources to visit communities more frequently.

“Generally people will rely on NAAJA giving them a piece of paper/card stating the date NAAJA will be back in the community. However, follow up appointments are often missed because people can’t get a lift back into town or something else happens. As a result matters progress very slowly and people can miss/be without payments for extended periods. More regular trips would be beneficial.” Lawyer B

More frequent visits would also help to build the relationships of trust required to ensure that clients feel comfortable speaking with their lawyer.

“Speaking to not only a stranger, but someone from a completely different cultural background, can be daunting...The sensitive nature of many legal issues may also make it difficult for people to seek out legal assistance.” Lawyer A

“People often don’t have confidence to access the legal service by phone.” Lawyer C

“We know that when we start building relationships with certain communities, people or families, and people for example realise that some of their issues are legal issues and therefore come to us, or they feel more comfortable speaking to us, the number of people approaching us increases quite significantly. For those communities or people where we haven’t had the chance to build those relationships, and therefore may not have as many matters for, there are likely to be many people who have legal issues that they are not speaking to a lawyer about.”

Language is also a major issue for legal service provision, as it is for Centrelink and CDP providers. NAAJA lawyers do not speak the community languages and it is often difficult to access interpreters, particularly given the resource constraints NAAJA works within. Interpreters may not be available at the time they are needed, with bookings for interpreters required in advance but the time for a client interview being unpredictable.

“Not best practice but we try to do what we can without an interpreter or with the assistance of family members who have more English.” Lawyer B

One of the most problematic issues lawyers face when assisting clients with CDP related matters is the 13 week limitation period that applies when seeking back payment of a penalty period without payment. Recalling exact dates may be difficult for clients. NAAJA lawyers have found that it can be more effective to tie the relevant dates for the client’s legal matter to cultural festivals or something of some significance, like when the community river flooded.

As many clients do not recall the exact details about when and how they have been penalised, NAAJA will obtain client permission to make a Freedom of Information request. This can be a long and resource-intensive process because there are three Departments involved in the CDP program meaning there are occasions where separate files need to be obtained for each client not only from DHS, but possibly PMC and the Department of Education.

The vast distances and inaccessibility of remoteness communities often mean that the 13 week time limit for appealing an adverse Centrelink decision to obtain backpayment has often passed before people can obtain the legal assistance they need to work out what has happened with their payments – information which is critical to lodging an appeal in time. Periods without communication between lawyer and client can be even longer if clients cannot travel from outstations or are away for sorry business.

In practice, this means that even where appeals are successful, the clients may not receive back payments due of the 13 week time limitation having lapsed.

NAAJA lawyers also expressed concern that most CDP participants do not know about the Commonwealth Government insurance policy to cover people injured doing CDP work. Questions were also raised regarding the legality of a scheme where they have observed that the benefits are paid at much lower rate than workers compensation payments.

Other social security law issues which arise from the legal assistance NAAJA provides to CDP participants include claims for the Disability Support Pension. Indigenous Australians living in remote areas face significant barriers to accessing DSP.⁶⁶ Remoteness makes gathering appropriate evidence extremely difficult and timeconsuming, and discussing medical conditions with Centrelink staff is often challenging due to cultural and language barriers.⁶⁷ Unfortunately there are likely to be many people with serious medical conditions who may never have the legal support required to help them gather evidence and navigate the complex Centrelink processes to move onto a more appropriate payment.

“Issues with CDP can often lead to NAAJA assisting people to try to get onto the DSP. FOling files can assist with this, for example, FOled file which had flags that client had an intellectual disability and NAAJA was able to successfully advocate for him to get onto the DSP.”

NAAJA lawyers reported that some clients go without any payments for months due to compliance issues with mutual obligations, and eventually give up. NAAJA can sometimes help these clients get onto the DSP, but those who cannot access legal help may never have the opportunity to move onto this more appropriate payment.

Other legal issues experienced by NAAJA clients on CDP include public housing debts, consumer issues, Telstra debts, rent to buy schemes for white goods, funeral insurance, and child protection issues.

As NAAJA is the main legal service provider which visits these communities, additional complexity arises in trying to meet the legal need where NAAJA has a conflict and needs to refer the person to another legal service provider. The other legal service provider will usually try to assist people over the phone which often involves complicated logistics as people often do not have access to phones or reception. This heightens the risk of the person falling out of contact and/or further delays in progressing matters.

Given the complexity of social security law, NAAJA civil lawyers with little or no experience in social security law may be less inclined to be proactive as they don't feel confident advising on this area of law. Specialist social security funding would strengthen NAAJA's capacity and expertise to deal with Centrelink matters.

RECOMMENDATION 5: Unmet legal need and under-resourcing of legal services

- a) *Invest in comprehensive community legal education for affected communities on the CDP which includes an explanation of the penalty system.*
- b) *Fund specialist social security legal services to service communities where the CDP program operates to ensure there are services with the capacity and expertise to deal with CDP and Centrelink matters in general.*

⁶⁶ Commonwealth Ombudsman, Department of Human Services: Accessibility of Disability Support Pension for remote Indigenous Australians, December 2016.

⁶⁷ Proposed reforms to the Employment Services Accessment for CDP participants that would widen the scope of allowable evidence of medical conditions lapsed following the dissolution of Parliament on 11 April 2019.

AVAILABILITY OF CDP INFORMATION AND DATA

The documents governing the operation and monitoring of the CDP are not systematically published by the Department of Prime Minister and Cabinet or NIAA. There is little transparency regarding guidelines for the program's operation, with the latest publicly accessible version of the Guidelines Handbook dated effective on 7 September 2015. This document is not available on any government website and is instead hosted on the Australian Unemployed Workers Union website. The Programme Management Framework, Provider Funding Agreement and provider performance review guides are not available online.

This stands in contrast with the availability of similar jobactive documents. The Department of Education, Skills and Employment regularly publishes the latest version of provider guidelines, and has made the jobactive Deed and Performance Framework accessible to the public online. The disparity in the availability of information about each program means that there is a marked difference in transparency and public accountability for the CDP compared to jobactive.

The Open Government National Action Plan 2018-20 highlights the commitment of the Australian government to deliver better and more transparent outcomes for the Australian community. In line with this commitment, information about the operation and monitoring of the CDP should be made publicly available.

There is currently only one regularly updated and publicly accessible dataset regarding the CDP, the CDP Quarterly Compliance Data. This data is published every three months and provides valuable insight regarding the application of penalties within the CDP. However, other up-to-date data about the program has so far been available only through sporadic Questions on Notice in Senate Estimates. This has included the total number of CDP participants, the demographic breakdown of CDP participants, and the outcomes achieved by the program. As a result, publicly available data on the program is often out of date. The latest evaluation report only provides data up to early 2018 and the latest publicly accessible information on the percentage of CDP participants who are Indigenous dates to June 2018.

The Annual Reports of the Department of the Prime Minister and Cabinet do not provide data on CDP participation in a systematic manner. This is again in contrast to the Department of Education, Skills and Employment Annual Reports, which provide an extensive picture of jobactive's operation in the previous year. In order for the CDP program to be transparent and publicly accountable, regular and systematic reporting of program data must be instituted.

RECOMMENDATION 6: Transparent publishing of CDP information and data

- a) *Publish online current operational versions of the following documents in order to make the operation of the CDP transparent and publicly accountable:*
 - i) *CDP Guidelines*
 - ii) *Programme Management Framework*
 - iii) *Provider Funding Agreement and related Remote Activity Conditions*
 - iv) *CDP provider performance review guides*

- b) *Publish data online on a yearly basis showing the following indicators:*
 - i) *Number of CDP participants at date of report*
 - ii) *Breakdown of CDP participants by types of identity markers at date of report*
 - iii) *Employment outcomes of CDP participants*
 - iv) *Participation in Work for the Dole activities*
 - v) *Monthly jobseeker engagement rates*
 - vi) *Hosted placement rates*
 - vii) *Employer Incentive Fund use rates*
 - viii) *Indigenous Enterprise Development use rates*
 - ix) *Complaints and feedback monitoring data*

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Appendix 1

LESSONS LEARNED – INITIAL PROCESS EVALUATION

Challenge	Lesson learned for future projects	Observations for the Department
Unexpected changes in partner member centre resourcing, resulting in reduced capacity to carry out essential project activities	NSSRN will scope several projects simultaneously to ensure that there are a number of projects on foot at any one time	Secure and stable funding of legal services in remote Indigenous communities is essential to functioning of all the systems that help to improve access to justice and the welfare of people living in those communities
The nature of clients' lives means communication with them may be difficult and sporadic as they may be uncontactable by phone, there may be issues with literacy and language barriers and may not necessarily be in the community when the lawyers visit	Adjust project expectations of the timeline and number of client interviews possible given likelihood of obstacles to client communication	Some flexibility in timing of grant funding arrangements (including additional resourcing) may be required to enable research in these most remote Indigenous communities to occur
Reluctance of clients to participate in surveys in general, and particularly on a sensitive topic, and be recorded	Adjust project expectations of the timeline and number of client interviews possible given likelihood of obstacles to client consent and participation and consider group consultations as an alternative to interviews	N/A
Reluctance of some CDP Providers to allow interviews on or near their premises	Consultation with CDP Providers would ideally have occurred prior to the project commencement	N/A
Vulnerability of people in Indigenous communities to experiencing problems impacting on client availability for interviews	Adjust project expectations by building in more time in the project timeline to take into account greater likelihood of community mishaps, sorry business and other ceremonies	Some flexibility in timing of grant funding arrangements (including additional resourcing) may be required to enable research in these most remote Indigenous communities to occur
Staffing movement at partner member centre resulting in a longer process for reaching agreement on project plans	Ideally establish communication and seek formal endorsement of project concept at CEO organisational level before investing in further project development	Regular communication with providers is essential to enable the project plan to be adjustment in response to unforeseen events/circumstances. Through this relationship, informed decisions can be made about where flexibility may be required to enable a leanly resourced organisation to deliver desired outcomes.



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