NATIONAL SOCIAL SECURITY RIGHTS NETWORK

22 February 2018

The First Assistant Secretary
Community and Economic Development Division
Department of the Prime Minister and Cabinet
PO Box 6500 Canberra ACT 2600

Dear First Assistant Secretary,

National Social Security Rights Network Submission to the Department of Prime Minister and Cabinet's consultation on the Community Development Programme

1. The National Social Security Rights Network (NSSRN) is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with social security and family assistance payments. The NSSRN draws on this front line experience in developing its submissions and policy positions.

2. The NSSRN welcomes the decision by the Department of Prime Minister and Cabinet (PM&C) to reform the Community Development Programme (CDP). Introduced in July 2015, the CDP is the Australian government's remote employment and community development service for unemployed jobseekers who must engage in job activity requirements to receive their unemployment payments.[1]

3. The program, which includes approximately 35,000 social security recipients, 83% of whom are Indigenous, requires participants to complete 25 hours of work per week to continue receiving regular payments.[2] These hours are far greater than required by jobseekers in non-remote areas who participate in the jobactive employment services programme. The harsher non-compliance measures in the CDP scheme have left many vulnerable people with no income support. Since its introduction, the CDP program has seen a 740% increase in financial penalties compared with the preceding scheme, the Remote Jobs and Communities Programme (RJCP) which had less onerous obligations and greater flexibility over choice of activity.[3]

4. The staggering escalation of penalties is impoverishing many Indigenous people living in remote communities. The CDP has created additional financial and social burdens for many individuals, which affects their families and their communities. For example, the increase in penalties has reduced food security in CDP affected communities. The Arnhem Land Progress Association has

[1] Department of the Prime Minister and Cabinet, The Community Development Programme (CDP), <https://www.pmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp>
[2] Ibid.
[3] Lisa Fowkes, *Social security penalties applied to participants in the Community Development Programme Overview of first 2 years (1 July 2015-30 June 2017),* (Report, Centre for Aboriginal Economic Policy Research, ANU) December 2017, 1.

stated that since the commencement of the CDP, communities stores have recorded a significant decrease in food sales, "coinciding with an immediate and meteoric increase in financial penalties applied to CDP participants."[4] The model has been linked to increased crime and poverty across CDP communities.[5]

5. The programme disproportionately impacts on Indigenous Australians, and runs grossly counter to Australia's international human rights obligations under the Convention on the Elimination of Racial Discrimination to prohibit and eliminate racial discrimination in all its forms.[6] The CDP has not achieved the intended policy outcome of assisting social security recipients into paid employment. While some people have found and kept jobs, most CDP participants have simply suffered loss of income, pushing them and their communities further below the poverty line.[7]

Objectives and Design Principles

6. We welcome the PM&C's Discussion Paper which identifies the need for a remote employment program that is built on "local control and decision making through a more community based approach."[8] We also support the other broad proposed objectives which emphasise the creation of new jobs and training, is incentive-based, and recognises the various barriers and support needs of remote job seekers.[9]

7. The NSSRN strongly supports the recommendation of the Senate Finance and Public Administration References Committee, which recently conducted the inquiry into the *'Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)'*, that remote "communities must be given a greater say in how a community development program is delivered in their area."[10] An effective community-based remote employment program is achievable if the interests and cultural perspectives of remote Indigenous communities are at the forefront of all design and implementation considerations. This can only be realised through genuine engagement and partnership between Government and remote Indigenous communities.

8. The current CDP has a number of underlying design issues that have fuelled the entrenchment of poverty in affected communities and directly discriminated against Indigenous people living in

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[4] Arnhem Land Progress Association, *Answer to Question on Notice (Question reference number 25)*, to Senate Finance and Public Administration References Committee, Parliament of Commonwealth, *Inquiry into The Appropriateness And Effectiveness Of The Objectives, Design, Implementation And Evaluation Of The Community Development Program (CDP)*, received 12 December 2017.

[5] Tomlin, Sam, 'Work-for-the-dole crime claim rejected by Indigenous Affairs Minister Nigel Scullion', *ABC News* (Online), 25 August 2017, <http://www.abc.net.au/news/2017-08-25/indigenous-affairs-minister-rejects-cdp-crime-claims/8842190>.

[6] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.refworld.org/docid/3ae6b3940.html [accessed 14 December 2017].

[7] The PM&C reported that the increase in CDP participants exiting from the programme could not be fully attributed to gaining employment. Many suggest that the onerous obligations have forced people off income support payments entirely. See Lisa Fowkes, *Social security penalties applied to participants in the Community Development Programme Overview of first 2 years (1 July 2015-30 June 2017)*, (Report, Centre for Aboriginal Economic Policy Research, ANU) December 2017, 8.

[8] Department of the Prime Minister and Cabinet, *'Discussion Paper: Remote Employment and Participation'*, December 2018, 4.

[9] Ibid, 3.

[10] Senate Finance and Public Administration References Committee, Parliament of Commonwealth, *Inquiry into The Appropriateness And Effectiveness Of The Objectives, Design, Implementation And Evaluation Of The Community Development Program (CDP)*, December 2017, p xii para 7.21

remote areas. These must not be replicated or retained. The NSSRN supports an alternative model that:

- is incentive-based, rather than punitive,
- promotes participation in meaningful, sustainable work which benefits the local community,
- ensures safe working environments for participants,
- provides for greater flexibility to take into account personal circumstances, such as family violence,
- encourages participation in important social and cultural activities, and
- recognises and aims to alleviate the various structural barriers to social and economic participation faced by remote communities, including high rates of illness and disability, lack of basic infrastructure, inadequate housing, limited access to technology, low rates of literacy and numeracy, and limited job opportunities.

Considering alternatives

9. The NSSRN has contributed to a number of recent public consultations on the CDP, including our submissions to the recent Senate Committee inquiry, and the 2015 inquiry into the *Social Security Legislation Amendment (Community Development Program) Bill 2015* ("the CDP2").

10. We note that this consultation was announced just prior to the release of the Senate Committee's inquiry report.[11] Many organisations invested a great deal of resources to actively participate in the Senate Committee's inquiry. The submissions made to the Senate Committee's inquiry make well thought-out suggestions regarding appropriate remote employment program based on assessment of the impact of the CDP on the communities they work in. These submissions, and the Senate Committee's inquiry report, can assist in the formation of a viable alternative model.

11. In 2017, the Aboriginal Peak Organisations NT (APONT), an alliance of organisations representing and governed by Aboriginal communities in the Northern Territory, invested significant resources into developing a community driven alternative to the CDP.[12] Their model, the Remote Development and Employment Scheme (RDES), was endorsed by the NSSRN and over 30 other organisations nationally, including many Indigenous organisations currently delivering CDP. We continue to support this model as a viable and effective program for remote communities which has been developed by an alliance of Indigenous organisations working in CDP affected areas.

12. The RDES aims to achieve sustainable change in remote communities by ensuring that Indigenous people have more 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."[13] The proposal emphasises job creation, incentives to participate (rather than penalties) and recognises

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[11] Aboriginal Peak Organisations Northern Territory, *'Aboriginal voices finally heard on CDP failure'*, (Media Release, 15 December 2017) <http://www.amsant.org.au/apont/20171215-cdp-aboriginal-voices-finally-heard-on-cdp-failure/>

[12] Aboriginal Peak Organisations Northern Territory, *'Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme'*, (Report, May 2017) <http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf>.

[13] Aboriginal Peak Organisations Northern Territory, *'Proposed Remote Development and Employment Scheme'*, (Infographics, May 2017) <http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf>.

cultural priorities. The scheme would be managed by an independent Indigenous-led board with local governance bodies.

13. This will likely lead to greater engagement with the program and will assist in ensuring that the program benefits the community. Community involvement may also ensure flexibility in the program to allow jobseekers to participate in important social and cultural activities.

14. The Senate Committee's inquiry report acknowledged the importance of this Indigenous-led work. We support the Senate Committee's recommendation that the Government give active consideration to APONTs proposals and formally cost the RDES.[14]

15. The PM&C's Discussion Paper broadly outlines 3 potential options for a future model of a remote employment program. Whilst the NSSRN endorses the APONT model, our comments on these three options appears below.

Options for a Future Model

16. The PM&C proposed three options for a future model are:
    i. a new wage-based model,
    ii. a reworking of the previously defeated CDP reform bill of 2015 (CDP2), or
    iii. improvements to the current CDP model.

<u>New waged-based model</u>

17. The proposed new wage-based model draws on elements of the CDP, the defeated CDP2 model, the former Community Development Employment Projects (CDEP) and the model developed by APONT.[15]

18. The waged based model proposes "a three tiered approach… designed to stream job seekers according to work capacity."[16] The NSSRN supports increased recognition that some people living in remote areas have significant barriers to workplace participation and require more intensive support than others. However accurate streaming necessitates a flexible and holistic assessment model involving other agencies, such as health and disability services and other support workers. This approach will enhance the ability of employment support agencies to identify underlying issues for particular jobseekers, and facilitate these individuals to receive appropriate supports both within and outside of the remote employment program.

19. While focusing on the capacity of job seekers, it is important to recognise that a key barrier to gaining employment is beyond their control; that is the lack of job opportunities in remote Australia. This means that the obligations placed on jobseekers with higher capacity must not be unrealistic or

[14] Senate Finance and Public Administration References Committee, Parliament of Commonwealth*, Inquiry into The Appropriateness And Effectiveness Of The Objectives, Design, Implementation And Evaluation Of The Community Development Program (CDP)*, December 2017, p xii para 7.20 and p xiv para 7.62

[15] Department of the Prime Minister and Cabinet, *'Discussion Paper: Remote Employment and Participation'*, December 2018, 7.

[16] Ibid, 10.

onerous. The options available to jobseekers to meet any activity requirements must be varied, flexible and tailored to each jobseeker.

20. The NSSRN supports a move away from penalties towards an incentive driven system. The penalties applied to CDP participants have been grossly disproportionate to those applied to jobseekers living in non-remote areas. In addition to being racially discriminatory and a breach of Australia's human rights obligations, these inflexible penalties caused significant income losses for many individuals, and led some to move completely off income support payments. The penalties caused considerable financial stress and the inability to meet basic living costs.

21. The proposed wage-based model incorporates a 'show pay' system where individuals who turn up to work activities receive an "enhanced welfare payment".[17] In our view, all work and employment activities must pay proper award wages and provide appropriate workplace protections.[18] We encourage a move away from a work for the dole model where people work for below the minimum wage. Instead, we support a remote employment program that retains a clear distinction between waged employment and income support payments. All work, independently found or created by the program, can be recognised as valid program activities. The wages derived from this work can be reported and assessed as any other income. This ensures that income support payments exist as a safety net for all participants. This will also assist in protecting jobseekers from exploitative and demoralising work for the dole activities.

22. A community-driven model, that resources the creation of new jobs paying real wages, has the potential to deliver great benefit to remote communities.

CDP 2 model

23. The NSSRN does not support the proposal to rework the previously defeated *Social Security Legislation Amendment (Community Development Program) Bill 2015*. The NSSRN opposed this bill in our submission to the inquiry conducted by the Senate Finance and Public Administration Committee in 2015.[19] Although the bill proposed to amend aspects of the harsh CDP regime, it failed to properly address the structural issues that caused the grossly disproportionate and escalating application of penalties on Indigenous communities. Furthermore, the model proposed to confer substantial powers onto the Minister. At the time, the Minister expressed a desire for more rapid applications of penalties.

24. In our submission to the Senate inquiry, we argued that the proposal to transfer "excessive power to the Minister… undermine[d] basic protections in social security law without adequate justification." That power would have allowed the Minister to override or modify the application of the *Social Security Act* to CDP participants, including "transferr[ing] certain decisions to mainstream

[17] Ibid, 8.

[18] We note that current CDP workers are not covered by any worker compensation scheme. See Australian Council of Trade Unions, Answer to Question on Notice, to Senate Finance and Public Administration References Committee, Parliament of Commonwealth, *Inquiry into The Appropriateness and Effectiveness of the Objectives, Design, Implementation and Evaluation of the Community Development Program (CDP)*, received 8 September 2017.

[19] National Welfare Rights Network, Submission No 17 to Senate Finance and Public Administration Committee*, Social Security Legislation Amendment (Community Development Program) Bill 2015*, 29 January 2016, <https://www.aph.gov.au/DocumentStore.ashx?id=9314ca71-d0da-4ef3-94d3-3e54e6885a99&subId=408412>.

employment service providers and reduce[ing] appeal rights in relation to certain compliance decisions."[20]

25. We were very concerned that the bill proposed to transfer the core administration of payments and the compliance framework to CDP provider organisations. In the current CDP model, many have observed the contractual arrangements with CDP providers have been a driver of penalties imposed.[21] Unlike the jobactive work-based activities, CDP providers receive service fees based on attendance at job activities. Fees are paid in three circumstances: if the jobseeker attends for their activity, or the jobseeker does not attend but has a reasonable excuse or the provider recommends that a penalty be imposed and then re-engages them within 2 weeks.[22] This system of financial incentive makes it unlikely for CDP providers to exercise discretion when recording non-attendance. The NSSRN does not support any proposal that transfers increased administration and service delivery to CDP providers.

26. For these reasons, we do not support the CDP 2 model.

<u>CDP with improvements (Option 3)</u>

27. We do not support any attempts to reform the current CDP model. Given the gravity of its impact on remote communities, as outlined above, the program needs to be overhauled.

Implementation and transition arrangements

28. The Government is empowered to make some immediate and important changes to improving the CDP. These changes do not require the passage of legislation. Irrespective of the time it may take to transition to a new programme, the harm being caused by the current programme necessitates immediate action to:
    i. Cease the penalty regime,
    ii. Reduce work for the dole obligations, and
    iii. Introduce greater flexibility to the programme.

29. We again renew our longstanding call for additional resources to support remote service delivery by the Department of Human Services. The delivery of any remote employment program must focus on the core functions of providing valuable and meaningful activities and helping job seekers into employment. DHS's administrative functions must not be delegated to CDP providers who may be motivated by other interests. More funding is needed to increase the presence of DHS remote servicing teams in remote communities and to ensure that social workers and job capacity assessors are available on the ground for face to face appointments.

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[20] Ibid, 7.

[21] Lisa Fowkes, *Social security penalties applied to participants in the Community Development Programme Overview of first 2 years (1 July 2015-30 June 2017),* (Report, Centre for Aboriginal Economic Policy Research, ANU) December 2017, 3.

[22] Ibid.

Conclusion

30. The CDP has punished and impoverished remote communities. It must be abolished.

31. The NSSRN urges the Government to give proper consideration to APONT's alternative proposal for the CDP. This proposal was developed by an alliance of Aboriginal organisations based in CDP affected communities, and supported by over 30 organisations nationally. It is community driven, recognises cultural priorities, is incentive-based rather than driven by penalties, and aims to achieve long term sustainable improvements to the economic outlook of remote Australia.

32. A viable and effective remote employment program will only exist if Indigenous communities lead in the design and implementation of any future model. The Government must work in genuine partnerships with Indigenous organisations and communities to achieve this aim.

Contact

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