



CENTRAL LAND COUNCIL

**Submission to the Senate Finance and Public Administration Legislation
Committee in relation to the Social Security Legislation Amendment
(Community Development Program) Bill 2015.**

5 February 2016

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Terms of Reference

The Senate referred the Social Security Legislation Amendment (Community Development Program) Bill 2015 to the Senate Finance and Public Administration Legislation Committee for inquiry and report by **29 February 2016**.

Purpose of Bill

The key components of this Bill are:

- 1. Establishment of remote income support payments and weekly payments.*
- 2. Responsibility for payment and administration of income support to be transferred to CDP providers*
- 3. Creation of tapering arrangements for remote income support payments*
- 4. Delegation of power to Minister for Indigenous Affairs to determine compliance arrangements for remote income support payments.*

Executive summary

The CLC does not support passage of the Social Security Legislation Amendment (Community Development Program) Bill 2015.

The measures in this Bill do not address the actual short comings of the current CDP model including; the disengagement and disturbingly high rate of breaching for remote participants; problems with DHS assessment and exemptions processes; the lack of actual training and employment outcomes; the need to redesign the financial model and the perverse incentives for CDP providers; and the lack of local Aboriginal organisations as providers. Instead of addressing these flaws in a considered and consultative manner the Australian Government is seeking to impose yet more reform. This Bill fails to protect the most vulnerable, vests an inappropriate level of power in the responsible Minister thereby avoiding critical Parliamentary scrutiny of social security laws, and entrenches discrimination. Furthermore, there has been no consultation or engagement with providers, remote participants or Aboriginal organisations.

Rather than seeking to progress this Bill, the CLC urges the responsible Minister to implement an urgent CDP review and redesign process in close consultation with CDP providers, Aboriginal organisations and experts, and informed by an evaluation of relevant data and community views. This process would aim to improve the current model and address serious problems with the CDP model.

In addition to seeking to address the immediate crisis in the CDP model, there remains a need to acknowledge that the basic policy parameters of the CDP are flawed in relation to remote Aboriginal communities. The CLC and the Aboriginal Peak Organisations NT (APO NT) have long been advocating the need for a sustainable and positive subsidised wages program, as opposed to a welfare scheme, to stimulate remote employment, participation and enterprise development. It would encompass the following elements:

- Maximising employment outcomes requires not only significant investment in labour supply but also a pro-active approach to generating additional employment demand;
- The creation of social enterprises increases market-based business activity and builds a local community economy, with the aim of reinvesting back into the community. This can be achieved through investment in local Aboriginal organisations;
- Community control over community priorities and activities;
- Increasing participation requires genuine pathways that recognise levels of educational and other disadvantage;
- The model is based on providing pathways, support and incentives, rather than simply taking a punitive approach;
- Participants are encouraged to enter, move through and eventually exit the scheme (in the latter case for mainstream employment where possible), by using a system of incentives coupled with a mechanism similar to CDEP's 'no work no pay';
- Draws on a sustainable livelihoods framework that encompasses participation in the mainstream economy and cultural practice.

The CLC urges the Australian Government to work with APO NT to design and implement a trial of such a program in the NT including allowing sufficient resources and time to ensure close monitoring and evaluation of the outcomes. Details of this model are attached to the APO NT submission to this inquiry.

Recommendations

Recommendation 1. The CLC recommends that a thorough CDP review and redesign process be undertaken in close consultation with CDP providers and Aboriginal organisations, and informed by community views and relevant data.

Recommendation 2. The CLC urges the Australian Government to work with APO NT to design and implement a trial of the Remote Participation, Employment & Enterprise Development Scheme in the NT including allowing sufficient resources and time to ensure close monitoring and evaluation of the outcomes.

Recommendation 3. That the Parliament retain its role in scrutinising changes to social security law rather than delegating such important decisions to a single Minister.

Recommendation 4. That the proposal to allow CDP providers to assume responsibility for the administration of welfare payments and application of penalties to some remote participants be scrapped. Any such future proposal should be designed carefully, in close consultation with experts and providers, and ensuring appropriate safeguards.

Recommendation 5. That an urgent review into the high breaching rates and the application and outcomes of the DHS assessment and exemptions processes be undertaken (as part of the CDP review and redesign process).

Recommendation 6. That the 25 hours per week Work for the Dole activity requirement applying to remote participants be adjusted to conform with the urban requirement of 15 hours per week.

Recommendation 7. That the Social Security Legislation Amendment (Community Development Program) Bill 2015 be rejected in its entirety.

Introduction and context

The Central Land Council (CLC) welcomes this opportunity to provide a submission to the Senate Finance and Public Administration Legislation Committee in relation to the Social Security Legislation Amendment (Community Development Program) Bill 2015.

The CLC is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* ('ALRA'). Amongst other functions, it has statutory responsibilities for Aboriginal land acquisition and land management in the southern half of the Northern Territory. The CLC is also a Native Title Representative Body established under the *Native Title Act 1993* ('NTA'). Pursuant to the ALRA more than 50% of the NT is now held by Aboriginal Land Trusts on behalf of traditional owners. The CLC region covers approximately 780,000 km² of land of which 417,318 km² is Aboriginal land under the ALRA. Given existing pastoral land was not able to be claimed this Aboriginal land tends to be very arid and remote. In addition, rights have been asserted and won under the *Native Title Act 1993*, and traditional owners unable to claim land under the ALRA have succeeded in obtaining rights to small areas known as Community Living Areas, under NT legislation.

Through its elected representative Council of 90 community delegates the CLC continues to represent the aspirations and interests of approximately 17,500 traditional landowners and other Aboriginal people resident in its region, on a wide range of land-based and socio-political issues.

The CLC aims to improve the lives and futures of its Aboriginal constituents through sustainable development and change. The CLC's development approach is based on an integrated and strengths-based strategy of building economic, social and cultural capital. Significant work is being done under the various functions of the CLC in each of these related areas through initiatives in: natural and cultural resource management; the development of remote enterprise and employment pathways; innovative community development work, ensuring land owners use

income generated from land use agreements for broad community benefit; and land administration and land use agreements for third parties and traditional owners.

The CLC has a strong interest in the employment and welfare policy settings and arrangements that apply to remote communities. The past decade has seen significant reform in this area, and the CLC has worked with other Aboriginal organisations, particularly through the Aboriginal Peak Organisations NT (APO NT), to develop and advocate a positive reform agenda aimed at creating more sustainable enterprise, participation and employment opportunities for remote communities. This work has included:

- Pre-2007 working with CDEP providers implementing community ranger programs and natural resource management programs;
- 2007 - CLC response to NTNER package of measures, including reform and dismantling of CDEP;
- 2007 - CLC submission to the senate inquiry into the NTNER Bills. The CLC opposed the scrapping of CDEP, and expressed concern about the clear link to income management as a driver for abolishing CDEP, as follows:

Separately, the Government has announced it will phase out CDEP over this financial year and replace it with mainstream STEP training and Work for the Dole programs. Consistent with this announcement, the Social Security Bill includes provisions to allow for quarantining of CDEP transition payments. The CLC is concerned that the motivation for the Government's decision to scrap CDEP is the inability of the Government to be able to quarantine CDEP because it is wages. CDEP is the backbone of many remote communities and the phasing out of CDEP so quickly is likely to put many thousands out of work, greatly reduce the income of communities, and put significant strain on local initiatives, essential services and communities as a whole. In the case of the CLC, the organisation employs over 70 people in ranger programs and it is very uncertain how many of the positions in this successful program will be able to be funded beyond CDEP. The CLC is especially concerned that the change is taking place in circumstances where the Standing Committee on Aboriginal and Torres Strait Islander Affairs is yet to report on its inquiry into indigenous employment. The inquiry has received many favourable submissions on the positive benefits of the CDEP program. (CLC 2007);

- 2007 - Proposal to the Department of Prime Minister and Cabinet regarding the need to invest in essential environmental services (via CDEP) in the Northern Territory through the Central and Northern Land Councils' Caring for Country (CFC) programs;
- 2008 - CLC response in relation to the Australian Government 2008 CDEP Discussion Paper;
- 2010 - After the formation of the Aboriginal Peak Organisations NT (APO NT) in 2010 the CLC worked with the other four member organisations, and NT CDEP providers, to not just critique government policy but develop an alternative model;
- 2010- The convening of 2 APO NT forums in Darwin to consult with NT CDEP providers;
- 2010 and 2011 – APO NT engagement of specialist assistance to develop a new model, and ongoing consultation with CDEP providers in its development and finalisation;
- 2010 - APO NT development of 'Funding the Jobs Gap: A proposal for a new Community Employment and Enterprise Development Scheme (CEEDS) for regional and remote Indigenous Australia';

- 2011 – APO NT response to the Australian Government Review of Remote Participation and Employment Services ‘Creating and Supporting Sustainable Livelihoods: A Proposal for a New Remote Participation, Employment & Enterprise Development Scheme’;
- Substantial lobbying efforts to promote the proposed new model, including with then Minister Macklin, Minister Scullion, members of the Opposition and various senior departmental officials.

Unfortunately this work has largely been ignored. This inquiry provides a welcome opportunity for parliamentary scrutiny of the proposed Bill, and related program and policy context.

Reform fatigue and the need for consultation

Since 2007-8 there has been constant review and reform of the employment and welfare arrangements applying to remote areas in the NT, including the review and scrapping of CDEP, implementation of the so-called ‘real jobs’ policy, application of blanket compulsory quarantining of welfare payments and subsequent changes, roll-out of RJCP in 2013, replacement with the Community Development Program, and the current proposed reforms. In remote regions there is widespread confusion and exhaustion in relation to government policy generally, and specifically in relation to welfare and employment arrangements.

Over this period of intense change the CLC, like so many other Aboriginal organisations and insightful commentators, has consistently called for:

- Reintroduction of a reformed and improved CDEP scheme (see details in the section following);
- Maximum involvement of local Aboriginal organisations in building capacity and creating new flexible employment and enterprise opportunities;
- Greater support and case management capacity for families and individuals that are struggling, rather than the imposition of further punitive approaches;
- A community development approach that seeks to build capacity, engagement and local control over the decisions impacting on Aboriginal peoples’ lives; and
- A halt to the rapid and unsustainable pace of change which is driving disempowerment and disengagement.

The CLC has argued that creating sustained and positive behavioural change requires a deliberate and evidence-based community development approach. The CLC’s Community Development Framework (2009) sets out the CLC’s development approach.

In keeping with this policy churn, the changes proposed in this Bill have not been subject to consultation with those most affected, nor with the service providers and representative organisations best placed to advise on the strengths and weaknesses of the CDP system as it is operating now. There has not been sufficient transparency regarding data collection and analysis, and seemingly little evaluation of the perverse incentives and unintended consequences arising from the current CDP system. Given it has only been in place for 6 months it seems too early to be devising radical new measures without carefully considering the implementation of the current model.

The measures in this Bill appear to be another ad hoc attempt to salvage a failed policy initiative.

Recommendation 1. The CLC recommends that an urgent CDP review and redesign process be undertaken in close consultation with CDP providers and Aboriginal organisations, and informed by community views and relevant data.

CDP breaching rates and exemption process

The CLC is deeply concerned about the exceedingly high breaching rates for CDP participants. Breach rates have reached 12 times the national rate, that is, 60% of the non-attendance penalties attributed to CDP participants despite being only 5% of the national case load. While some of this may be explained by the roll-out of the new CDP system and confusion about requirements it is the CLC’s view that a far more compelling explanation is that the remote Work for the Dole requirements are too onerous, and the punitive approach is acting as a disincentive to engagement and participation. The result is that families are experiencing extreme financial stress when having to support those family members who are not eligible to receive their welfare payments.

The CLC is also concerned to ensure that the DHS assessment and exemptions process be examined and improved. The blanket application of CDP to almost all categories of welfare recipients aged 18-49 years has resulted in the application of CDP requirements to a range of individuals who should be exempt from the requirements. Unless sufficient resources are applied to assist those who are most vulnerable to progress through assessment and exemption processes it is inevitable that high breaching rates will continue.

Recommendation 2. That an urgent review into the high breaching rates and the application and outcomes of the DHS assessment and exemptions processes be undertaken.

CDP does not equal CDEP

It is misleading for the CDP or measures in this Bill to be represented as bringing back aspects of the old CDEP. The table below provides a simple summary of the differences between the CDP and the CDEP.

CDEP	CDP
Was an opt-in program operating as an alternative to welfare. Social security payments were maintained as a safety net and for those who did not participate in CDEP	For remote regions 25 hours of Work for the Dole activity must be undertaken to receive welfare payments
Participants viewed CDEP as real employment and real wages and they were classified as employed.	Participants are classified as unemployed welfare recipients
CDEP was incentive-based. Participants worked 15 hours per week with the ability to work extra	CDP is a welfare program with a punitive approach to behavioural change.

hours and earn 'top up'.	This Bill provides that any extra work must be above the 25 WfD hours.
Wages complied with minimum wage requirements.	25 hours Work for the Dole activity requirement results in payment well below the minimum wage.
Local community empowered to set rules, priorities and projects	High level of Ministerial discretion and control over rules and projects (exacerbated by this Bill)
Local organisations operated the program and paid wages, including managing compliance and withholding of wages (no-work, no-pay) Welfare safety net remained	Majority of CDP providers are not local and the administrative and compliance requirements of the CDP have resulted in a trend towards large, for-profit providers. The Bill gives providers power to administer welfare payments, including application of penalties. No welfare safety net
CDEP arrangements were simple. Participants were paid wages by the provider and there was no link to social security.	CDP (including the extra measures suggested in this Bill) are complex. Participants will need to deal with both the provider and DHS.
CDEP providers were able to focus on community projects, training, employment and enterprise development tailored to suit community needs and dynamics. Many were extremely successful.	CDP providers are concerned with compliance and administration rather than employment outcomes.

The Aboriginal Peak Organisations (NT) 'Remote Participation, Employment & Enterprise Development Scheme' (2011) was developed by a broad coalition of groups in the NT, drawing on the expertise of many previous CDEP providers operating at the local level. It was submitted to the RJCP consultation process, and APO NT and local groups undertook an advocacy effort in Canberra to highlight and promote an alternative model. Clearly there was no appetite to consider these views at the time, and RJCP was rolled-out.

APO NT's model is a subsidised waged scheme rather than a welfare scheme, in that sense it draws on the strengths of the old CDEP scheme while addressing its flaws. It is based on the following key elements:

- Maximising employment outcomes requires not only significant investment in labour supply but also a pro-active approach to generating additional employment demand;
- The creation of social enterprises increases market-based business activity and builds a local community economy, with the aim of reinvesting back into the community. This can be achieved through investment in local Aboriginal organisations;
- Community control over community priorities and activities;
- Increasing participation requires genuine pathways that recognise levels of educational and other disadvantage;

- The model is based on providing pathways, support and incentives, rather than simply taking a punitive approach;
- Participants are encouraged to enter, move through and eventually exit the scheme (in the latter case for mainstream employment where possible), by using a system of incentives coupled with a mechanism similar to CDEP's 'no work no pay';
- Draws on a sustainable livelihoods framework that encompasses participation in the mainstream economy and cultural practice.

Recommendation 3: The CLC urges the Australian Government to work with APO NT to design and implement a trial of the Remote Participation, Employment & Enterprise Development Scheme in the NT including allowing sufficient resources and time to ensure close monitoring and evaluation of the outcomes.

Ministerial powers and lack of safeguards

The CLC is extremely concerned that the Bill provides the Minister for Indigenous Affairs and the Secretary of the Department of Prime Minister and Cabinet, with new regulation-making powers. Much of the detail of the new measures would be contained in these regulations including; the rules and compliance arrangements that would apply to remote income support payments; the regions to be declared as trial sites; and how other aspects of social security law would apply in those regions. Delegating such powers removes the ability of the Parliament to scrutinise significant changes to the social security arrangements for certain remote participants. Disallowable instruments do not provide the same high level of Parliamentary scrutiny. Leaving critical aspects of the new measures to be dealt with by regulation is inappropriate and undermines the role of the Parliament.

In addition, the proposal to transfer responsibility for paying welfare payments of some remote participants to CDP providers raises a number of serious issues:

1. The CDP model already provides incentives for CDP providers to penalise participants who do not attend, and this Bill potentially exacerbates this problem by seeking to ensure that penalties are able to be applied more quickly and with less safeguards;
2. DHS would no longer be overseeing and scrutinising the penalties being applied. Current DHS assessment, exemption and penalty review processes may need improvement but DHS oversight through the National Job Seeker Compliance Framework provides important safeguards that must be maintained;
3. CDP providers do not appear to have been consulted. Many CDP providers do not want this role and are understandably wary of the implications for their organisation and staff operating locally

Recommendation 4: That the Parliament retain its role in scrutinising changes to social security law rather than delegating such important decisions to a single Minister.

Recommendation 5: That the proposal to allow CDP providers to assume responsibility for the administration of welfare payments and application of penalties to some remote participants be scrapped. Any such future proposal should be designed carefully, in close consultation with experts and providers, and ensuring appropriate safeguards.

Coercion and Discrimination versus Community Control and Empowerment

The CDP model is discriminatory and premised on compliance, coercion and penalties in order to achieve engagement and participation. There is already sufficient evidence to suggest that discriminatory and punitive measures do not drive fundamental behavioural change. The application of income management in the NT is a case in point. The final evaluation report of income management (Bray et al 2014, p. 320)¹ clearly concludes that:

taken as a whole, there is no evidence to indicate that income management has any effects at the community level, nor that income management, in itself, facilitates long-term behavioural change.

This finding is supported by a body of other evidence indicating that coercive policies generally do not create long-term sustainable change. Further, the evaluation report observes that ‘building capacity is a challenging process that requires time and resources, and it cannot be developed by simply imposing restraints (ibid.). This report was commissioned by the Australian Government but it does not appear to have informed CDP policy development including the measures in this Bill.

The CDP system imposes more onerous Work for the Dole compliance arrangements on remote participants than non-remote. Remote participants are required to work 25 hours per week spread over 5 days per week, while those in non-remote areas (other than Alice Springs town camps) are only required to attend 15 hours Work for the Dole in order to receive entitlements. There was no consultation regarding the application of the 25 hours in remote locations, just as there has been no consultation regarding the proposed measures in this Bill.

The data is already demonstrating that these onerous conditions are not resulting in the desired behavioural change but are driving the disturbingly high application of penalties, and very likely resulting in increased disengagement from the welfare system altogether. Some CDP providers in the CLC region have observed that some participants are moving out of remote locations to regional centres to access a less onerous regime. While it may be too early to quantify, CDP may well be contributing to urban drift and increased homelessness.

Given the vast majority of participants in remote areas are Indigenous and the Minister for Indigenous Affairs is the responsible Minister for this Bill, it is self-evident that the measures will disproportionately impact on Indigenous people. The Bill provides no safeguards to prevent even harsher penalties being applied to remote communities and removes DHS oversight and

¹ Bray, R., Gray, M., Hand, K., and Katz, I. (2014) Evaluating New Income Management in the Northern Territory: Final Evaluation Report, Social Policy Research Centre, Australian National University.

safeguards. The most vulnerable and impoverished people in Australia are being subject to the most onerous welfare requirements making it more likely they will fail and receive financial penalties. This is clearly discriminatory and unacceptable.

Recommendation 6: That the 25 hours per week Work for the Dole activity requirement applying to remote participants be adjusted to conform with the urban requirement of 15 hours per week.

Available data on rates of breaching and penalties and apparent movement of participants out of remote regions are strong indicators of the failure of the current policy and of the folly in seeking to further entrench a discriminatory and coercive approach through the measures in the Bill.

The CLC urges an approach that ensures community control over community priorities and activities.

Rather than the Minister determining the range of activities that meet requirements, as provided in the Bill, APO NT's proposed model for Remote Participation, Employment & Enterprise Development Scheme is underpinned by a development approach which seeks to re-empower communities to define their own priorities, design workable compliance regimes, move participants along a pathway to increased employment and stimulate local enterprise and job creation.

The measures in this Bill appear to be entirely incompatible with such outcomes.

Recommendation 7: That the Social Security Legislation Amendment (Community Development Program) Bill 2015 be rejected in its entirety.

Conclusion

The CLC is in no way expert on matters of social security law, however we have forty years of experience in working effectively with Aboriginal people in central Australia. The CLC has great expertise in effective engagement, seeking informed consent, building and supporting Aboriginal governance structures, and implementing a development approach based on the principles of empowerment, social justice, participation and self-reliance. The CLC, and the APO NT, have been persistent and tenacious in calling for a different approach to the welfare and employment arrangements for remote communities. We have also put considerable effort into devising an alternative policy approach. This has been consistently ignored, and the results are both predictable and deeply distressing.

CDP appears doomed to fail and the Bill should not be supported. The application of further discriminatory and coercive policies is reinforcing a feeling of hopelessness and disempowerment amongst Aboriginal people in our region. It is no surprise that many are disengaging from the system completely, putting further financial pressure on families that are already struggling. A new approach is urgently needed, and the CLC stands ready to work with any government to design and trial sensible, sustainable, empowering policies, such as APO NT's proposed model for Remote Participation, Employment & Enterprise Development Scheme.

