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Submission: A fair and community-led approach to  
remote community and economic development

Inquiry into the Community Development Programme (CDP) by  
the Senate Standing Committees on Finance and Public  
Administration

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# 1. Overview of submission

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## Executive Summary

All Australians rightfully expect to be treated equally and respectfully by governments and to receive fair payment for work. But these basics are being denied to Aboriginal and Torres Strait Islander people subject to the Community Development Programme (CDP) in remote areas.

CDP was introduced into designated remote areas in July 2015, with very little consultation with the organisations that were expected to deliver CDP, and no public consultation with the people in remote communities whose day-to-day lives would change under CDP.

CDP is a government program that requires participants ('jobseekers'), some 83 per cent of whom are Aboriginal and Torres Strait Islander, to undertake up to 500 or 760 more hours of work activities per year (depending on age) for the same amount of social security income as participants in the non-remote 'Jobactive' program, most of whom are non-Indigenous.

In other words, a program targeting Aboriginal and Torres Strait Islander people in remote communities sees them paid substantially less money per hour over the course of a year than their counterparts in non-Indigenous majority urban areas.

In some cases, people are doing work through CDP for which they could be employed, paid a minimum wage and afforded workplace rights and protection. At the other extreme, people with disabilities, who have lesser access to Centrelink assessment services, are at greater risk of having their work capacity incorrectly assessed and then being penalised for not being able to meet all their work obligations.

Many Aboriginal and Torres Strait Islander people in remote communities are at greater risk of being penalised for not complying with Centrelink obligations because of known barriers to accessing the system, such as disability, English as a second, third or fourth language and a lack of availability of services in remote areas.

As a result of having to work many more hours to receive social security benefits, financial penalties applied by the Department of Human Services against Aboriginal and Torres Strait Islander people subject to CDP have soared since the program was introduced in July 2015. CDP participants are penalised at around 20 times the rate of non-remote jobseekers and in 2015-16, 90 per cent of individuals penalised and subject to CDP were Aboriginal and Torres Strait Islander.

Not only is CDP a discriminatory regime that very likely breaches the *Racial Discrimination Act 1975* (Cth) and Australia's international human rights obligations, it is a missed opportunity to address one of the key drivers of unemployment in remote communities – the lack of jobs. Money is being poured into a program that is reportedly strangling opportunities for employment creation and community development and seeing families go hungry and young people disengage. The program has been described as 'a national shame' by Senator Patrick Dodson.

CDP must be abandoned and replaced by a fair and non-discriminatory model for community and economic development in remote communities – one that is consistent with principles of self-determination and community control and that respects the economic, social and cultural aspirations and rights of Aboriginal and Torres Strait Islander people in remote communities.

The Aboriginal Peak Organisation of the NT has developed an alternative that is gaining broad support – the Remote Development and Employment Scheme. The Human Rights Law Centre (HRLC) supports and endorses this model.

## Recommendations

This submission focuses on terms of reference (a), (d), (f) and (g) and makes the following recommendations:

### **Recommendation 1:**

The Federal Government should abandon CDP and replace it with a fair and human rights compliant model for community and economic development in remote communities that is consistent with principles of self-determination and community control.

The HRLC endorses the Aboriginal Peak Organisation NT's Remote Development and Employment Scheme as a viable and Aboriginal-led alternative to CDP.

### **Recommendation 2:**

The Federal Government should immediately remove the discriminatory requirement for CDP participants to work more hours for social security payments by reducing the work activity obligations of CDP participants to no more than that which applies to Jobactive participants.

### **Recommendation 3:**

The Federal Government should immediately amend contractual arrangements with CDP providers to remove the financial incentive for providers to recommend to the Department of Human Services that a financial penalty be applied where a person fails to comply with their work activity obligations.

### **Recommendation 4:**

The Federal Government should immediately implement the recommendations of the Commonwealth Ombudsman's report, *Department of Human Services: Accessibility of Disability Support Pension for Remote Indigenous Australians*, to ensure equal access to social security benefits.

## 2. A fair and community-led approach to remote community and economic development

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### Background

The remote Community Development Programme ('CDP') was introduced into remote areas across much of Australia on 1 July 2015, replacing the Remote Jobs and Communities Program ('RJCP'), which had only been in place for two years.

CDP is a Federal Government work and participation program that requires participants, most of whom are Aboriginal and Torres Strait Islander, to undertake more hours of work activities<sup>1</sup> to receive the same amount of social security income as participants in the non-remote program (known as 'Jobactive'), most of whom are non-Indigenous.

CDP was introduced by way of variation of funding agreements between the Commonwealth Government and service providers,<sup>2</sup> rather than through a change in Australia's social security laws. The reforms were not therefore debated in Parliament prior to their introduction.

An attempt to change Australia's social security laws through the Social Security Legislation Amendment (Community Development Program) Bill 2015 ('CDP Bill') was widely criticised and failed to make it through Parliament.

The first part of this submission focuses on the need for an approach to community and economic development in remote communities that is underpinned by principles of fairness, equality and self-determination. The discriminatory design and impact of CDP is detailed in Part 3 of this submission. The submission focuses on terms of reference (a), (d), (f) and (g).

### A lack of consultation

There was no transparent or formal consultation or attempt at partnership in the design and implementation of CDP with Aboriginal and Torres Strait Islander people. Consultation appears to have been limited to CDP providers, and consultation with providers limited to implementation of pre-determined reforms.<sup>3</sup> This is well-documented in a submission by Jobs Australia to the Australian National Audit Office's current inquiry into CDP.<sup>4</sup>

This approach is completely inconsistent with the rights of Aboriginal and Torres Strait Islander people to self-determination and participation in decision-making on matters that affect their interests as articulated in the United Nations *Declaration on the Rights of Indigenous Peoples* ('UN Declaration').<sup>5</sup>

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<sup>1</sup> Referred to as 'work for the dole'. Work for the dole is an approved program of work, which can fulfil 'mutual obligation requirements'. People receiving activity-tested payments from Centrelink and who are not exempt must fulfil mutual obligation requirements to receive social security benefits. See Australian Government, *Guide to Social Security Law* (31 May 2017) 3.2.8-3.2.9.

<sup>2</sup> This was followed by the provision of the *Community Development Programme Guidelines Handbook* by the Commonwealth Government.

<sup>3</sup> Jobs Australia, *Submission in Response to the ANAO Audit: The Design and Implementation of the Community Development Programme* (April 2017) <https://www.ja.com.au/>.

<sup>4</sup> Ibid.

<sup>5</sup> The right to self-determination is also protected in the *International Convention on Civil and Political Rights* (article 1) and the *International Convention on Economic, Social and Cultural Rights* (article 1).

## The need for a fair process and for community control

Employment and training programs do need to be tailored to the labour market challenges of remote areas, however they must also be fair and consistent with the economic, social and cultural rights and aspirations of Aboriginal and Torres Strait Islander people in remote communities. Recognition must also be given to the damage wrought by past discriminatory and paternalistic laws and government practices and, by the chronic under-funding of remote communities in past decades.

CDP is an overly punitive scheme, which flies in the face of research that makes clear that people are more likely to engage positively with processes that are experienced as fair.<sup>6</sup> More onerous obligations and constant threat of financial penalty by the state via a Centrelink system that is incredibly difficult for many Aboriginal and Torres Strait Islander people in remote communities to access and navigate is not a fair one.

Critically, a fair approach is one led by, or developed in genuine partnership with, Aboriginal and Torres Strait Islander people, and one that does not punitively impose more onerous obligations on one group of people over another based on race or geographical location.

## An alternative community-led model

In a positive sign, and in implicit acceptance of the failings of CDP, it was announced as part of the 2017-18 Federal Budget that there would be consultation with remote Indigenous communities around 'a new employment and participation model for remote Australia'.<sup>7</sup> Further, CDP participants will be exempted from measures to toughen the social security compliance framework also announced with the Budget.

The starting point for a new model should be the economic, social and cultural needs and aspirations of those living in the remote communities subject to CDP, rather than the mainstream Jobactive model designed for more urban labour markets.

Further, the reforms outlined in the flawed CDP Bill must be abandoned and replaced by an Aboriginal and Torres Strait Islander community-led approach. Not only is such an approach consistent with the UN Declaration, it is also consistent with the service delivery principles outlined in COAG's National Indigenous Reform Agreement. These principles position the engagement and empowerment of Aboriginal people as 'central to the design and delivery of programs and services'.<sup>8</sup>

The Aboriginal Peak Organisations of the NT has worked with a diverse range of stakeholders to develop an alternative model for employment creation and community development in remote communities – the Remote Development and Employment Scheme. The HRLC commends APONT for this landmark piece of work and **endorses** APONT's proposal.

The Scheme focuses on increasing job opportunities in remote communities and valuing work through waged employment. People receiving income support through DHS would continue to have work obligations but these would be no greater than the obligations that apply to all other Australians receiving activity-tested social security payments. The system would be less punitive, give greater

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<sup>6</sup> See eg Tom Tyler, *Why People Obey the Law* (Yale University Press, 1990).

<sup>7</sup> Nigel Scullion, '2017-18 Budget: Community Development Programme' (Media Release, 9 May 2017) <http://www.nigelscullion.com/media+hub/2017+-+18+Budget+Community+Development+Programme>

<sup>8</sup> Council of Australian Governments, National Indigenous Reform Agreement (Closing the Gap), Schedule D.

discretion to local providers and allow for greater community input into delivery. There would also be an emphasis on case management support, engaging young people and ensuring accurate assessment of the health capacity of people work.

### 3. Discriminatory design and impact of CDP

#### Discriminatory design

##### More hours to work for the same amount of money

As noted above, CDP requires participants, most of whom are Aboriginal and Torres Strait Islander, to undertake more hours of work for the same amount of money as participants in the non-remote Jobactive program, most of whom are non-Indigenous. In other words, CDP participants are paid less money per hour. The following summarises the different obligations:

- Under CDP, 18 to 49 year olds must work 25 hours per week over a five day week (unless assessed as having lesser capacity) for 12 months of the year, with a maximum six weeks off.<sup>9</sup> This equates to approximately 1,150 hours per year. The obligation to do work activities commences from first day of entry into CDP.
- For most Jobactive participants, the requirement to do work activities will start 12 months after entry into the Jobactive program. 18-29 year olds must do 25 hours per week for 6 months of the year (650 hours per year), while 30 to 49 year olds are required to do 15 hours per week for 6 months (390 hours per year).<sup>10</sup>

Working 25 hours per week every week of the year for NewStart allowance as a single person in a remote area equates to a payment of approximately \$11 per hour.<sup>11</sup> This is well below the national minimum wage of \$17.70. Single mothers and fathers on NewStart don't fare much better, receiving approximately \$12 per hour over a 25 hour week.<sup>12</sup>

For people covered by the non-remote Jobactive program who are required to do 25 hours per week, the per hour rate is the same when looked at as a weekly amount. However, over the course of a year, the work obligations of Jobactive participants with a full capacity to work is nearly half that of CDP participants (500 hours less). This means substantially less work for the same amount of money as CDP participants.

In addition, for people under CDP doing work that they could be employed to do, they are also denied workplace rights and protections, such as a minimum wage and superannuation.

<sup>9</sup> Australian Government, *Community Development Programme Guidelines Handbook* (effective 7 September 2015); Australian Government, *Guide to Social Security Law* (31 May 2017) 3.2.9.70.

<sup>10</sup> Australian Government, *Guide to Social Security Law* (31 May 2017) 3.2.10.30. The 2017-18 Budget included a proposal to increase the work hour requirement for people 30 to 49 years old to 25 hours per week: see Commonwealth of Australia, *Budget 2017-18* (Budget Measures, Budget Paper No 2, 2017-18, 9 May 2017) 159.

<sup>11</sup> This is a weekly calculation based on the *fortnightly* rate for 'most single people', which is \$535.60 as at 23 June 2017. See Department of Human Services, 'Newstart Allowance' <https://www.humanservices.gov.au/customer/services/centrelink/newstart-allowance>. Those doing work-for-the-dole receive a supplement of \$20.80 per fortnight as at 23 June 2017: Australian Government, *Guide to Social Security Law* (31 May 2017) 3.2.9.60.

<sup>12</sup> Department of Human Services, *ibid.*

All Australians rightfully expect fair payment for work and to be treated equally. But these basics are being denied to many Aboriginal and Torres Strait Islander people subject to CDP in remote communities.

### **An unfair system targeting Aboriginal and Torres Strait Islander people in remote communities**

While sold as a program to address the unique labour market conditions of remote areas, CDP was undoubtedly targeted at Aboriginal and Torres Strait Islander people in remote communities. Notably, approximately 83 per cent of people subject to CDP identify as Aboriginal and Torres Strait Islander.<sup>13</sup>

The introduction of CDP was announced in December 2014 by the Minister for Indigenous Affairs, Nigel Scullion, rather than the Minister responsible for the social security system. Minister Scullion referred to findings of the Creating Parity, a report that is described as creating solutions to end disparity between Indigenous and non-Indigenous Australians.<sup>14</sup>

Further, CDP replaced RJCP, which in turn was created to supersede the Community Development Employment Projects (CDEP) – a scheme that saw Aboriginal organisations provided with grants to employ Aboriginal staff, and which operated alongside the social security scheme. Minister Scullion has described CDP as building on elements of CDEP.

### **A racially discriminatory program**

The former Aboriginal and Torres Strait Islander Social Justice Commissioner stated in 2015, not long after CDP commenced, that CDP may:

give rise to indirect discrimination and have a negative impact on the ability of Aboriginal and Torres Strait Islander peoples to enjoy their rights, particularly the right to social security. Income is fundamental to wellbeing and the ability of people to realise other economic, social and cultural rights. The recognition of social security as a human right acknowledges the particular vulnerability and insecure circumstances of people who are unable to obtain paid employment.<sup>15</sup>

The HRLC considers CDP to be inconsistent with protections against racial discrimination in the *Racial Discrimination Act* 1975 (Cth) and with Australia's obligations under the *Convention on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination* and the UN Declaration.

CDP means unequal access to social security payments for Aboriginal and Torres Strait Islander people in remote communities, thereby impairing the right to social security.<sup>16</sup>

As is discussed below, CDP is, in some cases, also denying Aboriginal and Torres Strait Islander people in remote communities the opportunity to work and to work under just and favourable conditions.<sup>17</sup>

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<sup>13</sup> Lisa Fowkes, *Update on Impact of the Community Development Programme on Social Security Penalties* (8 September 2016) 4.

<sup>14</sup> Andrew Forrest, *The Forrest Review: Creating Parity* (Commonwealth of Australia, 2014). This report has been heavily criticised, see eg Elise Klein (ed) *Academic Perspectives on the Forrest Review: Creating Parity* (CAEPR Topical Issue no 2/2014, Australian National University 2014).

<sup>15</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015* (Australian Human Rights Commission, 2015) 61.

<sup>16</sup> As articulated in United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, (entered into force 3 January 1976), art 9.

<sup>17</sup> *Ibid*, arts 6-7.



These limitations on rights to equality, social security, work and just and favourable conditions of work arise by reason of an unfavourable condition directed towards, and negatively impacting upon, a group that is overwhelmingly made up of Aboriginal and Torres Strait Islander people. It represents a racially discriminatory measure but it is not a special measure. Minister Scullion was at pains to point out that CDP would apply to 'all jobseekers in remote areas, including Indigenous jobseekers'.<sup>18</sup> Its sole purpose was not to advance Aboriginal people.

Further, the UN Special Rapporteur on the rights of Indigenous peoples has stated that:

affirmative measures by the Government to address the extreme disadvantage faced by indigenous peoples ... are not only justified, but indeed required under the international human rights obligations of Australia. *However, any such measure must be devised and carried out with due regard for the rights of indigenous peoples to self-determination and to be free from racial discrimination and indignity.*<sup>19</sup>

The social security system must respect the principles of human dignity and non-discrimination.<sup>20</sup> The UN Committee on Economic, Social and Cultural Rights has said that governments should ensure that Indigenous peoples 'are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions'.<sup>21</sup>

The discriminatory CDP requirements are having disastrous impacts on remote Aboriginal communities – communities that have already had to contend with many past discriminatory laws and government practices.

## Discriminatory impact

### **Lost opportunities for employment creation and community and economic development**

The investment in remote communities through CDP has been considerable but poorly designed to meet one of the key drivers of unemployment in remote communities – a lack of jobs. The lack of employment opportunities in remote communities has been recognised by the Federal Government.<sup>22</sup> Far from encouraging the creation of new pathways to meaningful work and enterprise in remote communities, CDP has been described by some providers as 'decreasing the emphasis on employment'.<sup>23</sup> The reasons for this include:

- the funding contract between CDP providers and the Commonwealth Government incentivises keeping people in full-time CDP work activities ('work-for-the-dole'), with the

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<sup>18</sup> Nigel Scullion, 'More Opportunities for Job Seekers in Remote Communities' (Media Release, 6 December 2014), <http://www.nigelscullion.com/media-hub/indigenous-affairs/more-opportunities-job-seekers-remote-communities>.

<sup>19</sup> James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms on indigenous people*, A/HRC/15/37/Add.4, 1 June 2010 [36] (emphasis added).

<sup>20</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 19: The Right to Social Security*, 39th sess, UN Doc E/C.12/GC/19 (4 February 2008) [22].

<sup>21</sup> *Ibid* [35].

<sup>22</sup> Department of Prime Minister and Cabinet, Submission No 9 to Senate Finance and Public Administration Legislation Committee, *Inquiry into the Social Security Legislation Amendment (Community Development Programme) Bill 2015* (undated) 3.

<sup>23</sup> Lisa Fowkes, Community Development Program Background Briefing (prepared for Jobs Australia, undated) [https://17-jobsaust.cdn.aspedia.net/sites/default/files/cdp\\_background\\_briefing.pdf](https://17-jobsaust.cdn.aspedia.net/sites/default/files/cdp_background_briefing.pdf).

majority of CDP provider revenue coming from having people in work-for-the-dole and complying with it.<sup>24</sup>

- the Community Development Fund, which was to fund larger economic and community development projects, was abolished and rolled into the Indigenous Advancement Strategy. Jobs Australia has stated that this 'reduced the focus on supporting employment, participation and community development opportunities that had been identified locally'.<sup>25</sup>
- CDP funding and reporting requirements are very complex and administratively burdensome, and there is pressure to recommend financial penalties for non-compliance, all of which limit the ability of staff working for CDP provider organisations to work with communities to create long term work and development opportunities.<sup>26</sup>
- with CDP participants required to work 25 hours per week, there is a considerable pool of unwaged labour available to complete jobs around the community that, in the absence of CDP workers, would require someone to be employed and properly paid.

It has been reported that CDP has not resulted in long term employment for most Aboriginal and Torres Strait Islander people subject to it.<sup>27</sup>

While the Federal Government has claimed an increase in 13 and 26 week job outcomes,<sup>28</sup> it is not clear whether these are new job opportunities, or seasonal and casual jobs that would have been filled regardless of CDP. It is also not clear whether CDP is reducing reliance on labour from outside remote communities or whether it is creating new or long term job opportunities.

### **Replacing waged employment for some and failing to build the skills of others**

Those on CDP in remote communities include many people wanting to work, but for whom there are very few job opportunities. Some individuals are doing work and receiving below minimum wage social security payments for activities for which they should be employed, paid a wage and superannuation, and afforded workplace protections.<sup>29</sup> Notably, under the former CDEP system, participants were considered to be employed and received an award wage.

We note with concern the following from a submission by Lisa Fowkes, an academic whose research has focused on RJCP and CDP:

Over half of providers surveyed in 2017 reported that it is likely that local governments are relying on CDP to do tasks that are their responsibility, while nearly 40% report private employers asking for CDP labour rather than employing people.<sup>30</sup>

<sup>24</sup> Lisa Fowkes, 'CDP and the Bureaucratic Control of Providers', in Kirrily Jordan and Lisa Fowkes (eds) *Job Creation and Income Support in Remote Indigenous Australia: Moving Forward with a Better System* (CAEPR Topical Issue no 2/2016, Australian National University 2016) 13.

<sup>25</sup> Jobs Australia, above n 3.

<sup>26</sup> Ibid, 9, 11-12.

<sup>27</sup> As at 30 April 2017, less than 3,500 Indigenous people had been placed into jobs for at least 26 weeks since the introduction of CDP. See Department of Prime Minister and Cabinet, 'CDP Employment Placements and Outcomes', tabled as part of Budget Estimates 2017-18, Senate Finance and Public Administration Committee (26 May 2017). See also Dan Conifer 'Community Development Programme Largely Failing Indigenous Participants, Figures Suggest' (ABC, online 29 May 2017).

<sup>28</sup> Nigel Scullion, 'CDP Hits a Major Milestone for Remote Jobseekers' (Media Release, 18 May 2017), <http://www.nigelscullion.com/media+hub/CDP+hits+major+milestone+for+remote+jobseekers>.

<sup>29</sup> Information provided by Aboriginal Peak Organisations NT. See also Lisa Fowkes, Submission No 8 to Senate Standing Committees on Finance and Administration, *Inquiry into the Appropriateness and Effectiveness of the Objectives, Design, Implementation and Evaluation of the Community Development Program* (June 2017) 11.

<sup>30</sup> Lisa Fowkes, ibid 11.

Others are doing tasks that have little resemblance to work or training for work, such as volleyball training and painting rocks, while not receiving support to find work or develop the skills for work. The incentive for providers to get people into education and training to help them develop skills for work was undermined with the removal of payments for training outcomes under CDP.<sup>31</sup> Research focused on the Ngaanyatjarra region in Western Australia has suggested that 'workplace pride is evaporating'.<sup>32</sup>

As a program that is reportedly strangling opportunities for employment, and that has some people receiving less than minimum wages for work that they could be employed at least at a minimum wage to do, CDP is impairing the right of many individuals to work and to just and favourable conditions of work.

### **More obligations means greater risk of financial penalty and unintended consequences**

Under CDP, financial penalties applied by Department of Human Services (DHS) against Aboriginal and Torres Strait Islander people have soared.

Being required to work more hours exposes Aboriginal and Torres Strait Islander men, women and young people in remote communities to a higher risk of financial penalty through the complex compliance regime in the *Social Security (Administration) Act 1999* (Cth).

In addition, contractual arrangements between the DHS and CDP providers create a financial imperative for CDP providers to recommend that DHS penalise people who fail to attend an appointment or a day of work without reasonable excuse.<sup>33</sup>

As the National Social Security Rights Network notes 'these are real penalties, representing money permanently withheld from the poverty level income of some of the poorest people and communities in Australia.'<sup>34</sup>

### **Aboriginal and Torres Strait Islander people far more likely to be penalised by DHS**

Many Aboriginal and Torres Strait Islander people in remote communities were already at greater risk of being penalised by DHS because of known barriers to accessing the Centrelink system, such as disability, a lack of English language, literacy and/or numeracy skills and a lack of access to services.<sup>35</sup>

Of all people around Australia required to undertake work activities for social security payments, less than five per cent are subject to CDP.<sup>36</sup> The other 95 per cent are covered by the non-remote

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<sup>31</sup> There are no longer outcome payments for education or training outcomes that don't relate to an apprenticeship or traineeship: Funding Agreement 2013-2018: Remote Jobs and Communities Programme (effective date 1 July 2015).

<sup>32</sup> Inge Kral, 'Only Just Surviving Under CDP: the Ngaanyatjarra Lands Case Study', in Jordan and Fowkes, above n 24, 23.

<sup>33</sup> See Australian Government, *Community Development Programme Guidelines Handbook* (effective date 7 September 2015). For discussion, see Lisa Fowkes, *Impact on Social Security Penalties of Increased Remote Work for the Dole Requirements* (Working Paper No 112/2016, Australian National University, 2016) 3.

<sup>34</sup> National Social Security Rights Network, Submission No 21 to Senate Standing Committees on Finance and Administration, *Inquiry into the Appropriateness and Effectiveness of the Objectives, Design, Implementation and Evaluation of the Community Development Program* (June 2017).

<sup>35</sup> See eg Fiona Allison et al, *Indigenous Legal Needs Project: NT Report* (2012). Also Commonwealth Ombudsman, *Department of Human Services: Accessibility of Disability Support Pension for Remote Indigenous Australians* (Report No 5, 2016), part 1.

<sup>36</sup> Jobs Australia, above n 3, 4.

Jobactive program. Despite being such a small number of jobseekers, CDP participants are reportedly:

- subject to nearly half of the total financial penalties applied nationally<sup>37</sup>
- penalised at around 20 times the rate of those in the non-remote Jobactive program.<sup>38</sup>

In 2015/16, 90 per cent of individuals subject to CDP who were penalised were Aboriginal and Torres Strait Islander.<sup>39</sup>

From the introduction of CDP on 1 July 2015 to 31 December 2016, 245,307 financial penalties were applied.<sup>40</sup> There are only around 35,000 people registered with CDP.<sup>41</sup>

It has also been suggested that there may be systemic bias in the assessment procedures applied before a decision is made by DHS to apply an 8 week no-payment penalty for serious non-compliance – DHS data indicates that CDP participants and Aboriginal people nationally are far more likely to have an adverse outcome following the assessment procedure.<sup>42</sup>

The disproportionate application of penalties to Aboriginal and Torres Strait Islander people under CDP further impairs the right to equality and to social security.

### **The day-to-day consequences of CDP**

The heavy reliance on penalties and compliance is having unintended and very concerning consequences on families, many of whom are already struggling with poverty, severe overcrowding and health issues.

Research by the Australian National University reports 'increased poverty, a reported drop in food sales, increasing debt and a greater risk of incarceration when the suspension of welfare payments limits people's ability to make payments towards fines'.<sup>43</sup>

In addition, the lack of specific focus on the needs of young people, together with an overly punitive approach, is reportedly discouraging participation by young people.<sup>44</sup> This in turn places more pressure on other family members to provide financial support.

Senator Patrick Dodson has described CDP as 'a national shame'<sup>45</sup>, noting that the challenges accessing Centrelink – people can be forced to wait hours on the phone to speak to someone to sort out their reporting and payments.

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<sup>37</sup> Department of Employment, 'Job Seeker Compliance Data – December Quarter 2016', table 17, available <https://www.employment.gov.au/job-seeker-compliance-data>.

<sup>38</sup> Based on data for December 2016 quarter, *ibid*. See also Lisa Fowkes, *Social Security Penalties Applied to Participants in the Community Development Programme. Update Including Data for the Quarter Ending December 2016* (24 April 2017).

<sup>39</sup> Fowkes, *ibid*, 2

<sup>40</sup> *Ibid* 1-2.

<sup>41</sup> Department of Prime Minister and Cabinet, 'The Community Development Programme (CDP)', Australian Government (accessed 23 June 2017) <https://www.pmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp>.

<sup>42</sup> Fowkes, above n 38, 1; Lisa Fowkes, 'Income of CDP on Income Support Participants' in Jordan and Fowkes, above n 24.

<sup>43</sup> Kirrily Jordan, 'Introduction', in Jordan and Fowkes, above n 24, 2; Joe Morrison, 'Why Government Policies Continue to Spectacularly Fail', in Jordan and Fowkes, above n 24, 9.

<sup>44</sup> Information provided by Aboriginal Peak Organisations NT.

<sup>45</sup> Dan Conifer, 'Controversial work-for-the-dole scheme a 'national shame,' Pat Dodson says' (ABC Online, 31 May 2017) <http://www.abc.net.au/news/>.

### **Disproportionate impact on people with disabilities**

Of particular concern is that many people living with disabilities in remote communities are being required to work beyond their capacity and are being penalised when they cannot comply.

People with disabilities in remote communities do not have access to Disability Employment Providers like their urban counterparts, and have lesser access to specialist health services. In addition, the Department of Human Services is not sufficiently funded to conduct assessments of capacity in-person in remote communities (which are key to both assessing work capacity and eligibility for the Disability Support Pension). Assessments are primarily done over the telephone, not always with the assistance of an interpreter when needed, or by someone just looking at the file.<sup>46</sup>

A report by the Commonwealth Ombudsman in 2016 documents inadequacies in the assessment process for the Disability Support Pension for people living in remote communities and makes a number of recommendations to ensure more equitable approaches to assessing work capacity and disability.<sup>47</sup>

Implementing these recommendations should help reduce the risk of people with disabilities being unfairly penalised and harmed by CDP.

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<sup>46</sup> Commonwealth Ombudsman, above n 35 [3.8].

<sup>47</sup> Ibid.