

National Social Security Rights Network Pre-Budget Submission 2019 – 2020.

***“Improving social security support to
vulnerable Australians through reform of
Domestic Violence and other measures”***

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1. About the NSSRN

The National Social Security Rights Network (NSSRN) is the peak body for community legal centres (CLCs) in Australia which provide specialist legal assistance in relation to social security and family assistance law, policy and administration.

The NSSRN seeks to inform the Federal Government's decision-making about the Budget by focussing on priority areas for reform in social security and family assistance law and policy.

2. Overview

Our 2019 –2020 Pre-Budget Submission focuses on measures to improve access to the social security system for people experiencing domestic violence. These measures are based on the findings of our major research report, *How well does Australia's social security system support victims of domestic violence?*, which was released in August 2018.¹

On 2 January 2019 we welcomed changes made by the Department of Social Services to the Guide to Social Security Law in response to some of the recommendations in our report. The changes are aimed at improving the likelihood that domestic violence is fully understood and properly considered by decision-makers when assessing social security matters.

However, there remain problematic measures. These include the recent passing of the *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018* which is likely to create further barriers to accessing income support for a particularly vulnerable group of people experiencing domestic violence, mostly women and children, by increasing the waiting period for payments to as much as four years. The NSSRN calls for the removal of the newly arrived residents waiting period (NARWP), at the very least for Special Benefit and payments intended to support families with children.

In addition to the extension of the NARWP, the NSSRN also remains opposed to a number of measures announced in the 2018-19 Budget that are either under consideration by the Senate, or in the process of implementation following the passage of legislation, including but not limited to:

- Targeted Compliance Framework (TCF)
- Compulsory participation in ParentsNext pre-employment program (ParentsNext) and the application of the TCF to compulsory participants
- Community Development Programme (CDP), and
- Cashless Debit Card (CDC) schemes.

In light of the increased demand for legal advice and support to deal with social security matters, including those concerning domestic violence-related issues and the measures outlined above, the under-resourcing of the CLCs which provide specialist advice in this area needs to be addressed with adequate and secure funding.

¹ National Social Security Rights Network, 'How well does Australia's social security system support victims of family and domestic violence?' (Research Paper, National Social Security Rights Network, 2018).

We also renew our urgent call for the Government to increase the inadequate rate of all social security working age payments to ensure that people who are already struggling do not fall further into destitution and poverty.

3. Summary of recommendations

(i) Make Centrelink easier to access for people experiencing Domestic violence by:

- Amending the Guide to Social Security Law to clarify that a history of Domestic Violence must be considered as special circumstances in relation to a) debt waiver and b) referral to the Commonwealth Director of Public Prosecutions.
- Improving access to Crisis Payment by:
 - increasing the time period from the occurrence of the extreme circumstances within which a claim for Crisis Payment must be made from 7 days to 14 days.
 - extending the eligibility for Crisis Payment from four to six times per year.
- Establishing Departmental expert positions and a Domestic Violence Hotline.

(ii) Remove, or at very least reduce, the Newly Arrived Residents Waiting Period for Special Benefit and payments intended to support families.

(iii) Reform the TCF to effectively support job seekers to become job-ready by:

- Increasing the agency of participants
- Introducing greater flexibility to employment pathway plans
- Providing flexible and holistic assessments models
- Recognising the complex and varied barriers to employment, and
- Introducing regulation and evaluation of employment services providers.

(iv) Reform or replace ParentsNext so that it becomes a genuine pre-employment program that:

- effectively assists parents to achieve their education and employment goals while taking into account the unpaid work they undertake to care for their children,
- is completely voluntary,
- does not affect the security of a parent's income support payments by imposing mutual obligation requirements and applying a punitive system of sanctions,
- addresses the structural barriers preventing parents from returning to the labour market,
- removes any financial incentives to providers which may motivate them to work against the interests of participants.

(v) Abolish CDP and instead reinvest resources to:

- Establish a new remote employment scheme, based on the framework set out in the Fair Work and Strong Communities proposal, which has, as its primary goal, long term improvements in employment rates, increased incomes and empowering local communities.
- Commit to funding the establishment of at least 12,000 new jobs in remote communities to be wholly, or predominantly, created in Indigenous community organisations.
- Commit to establishing new governance arrangements for a remote employment scheme that are independent from Government, legislatively based and Indigenous led.

- Commit to making the new scheme bottom-up, not top-down, with the ability for local people to set objectives within the long term goals of the scheme and to adapt program settings to local circumstances.
- Commit to ensuring that any new program arrangements will not directly or indirectly discriminate against Indigenous people.

(vi) Make CDC and IM programs voluntary and provide easier opt out options.

(vii) Raise the Rate.

- Increase the single rates of Newstart, Youth Allowance and related payments by \$75 per week to reduce poverty and inequality in Australia.
- Index payments to wages as well as CPI to ensure they maintain pace with community living standards.
- Increase Commonwealth Rent Assistance by 30% or \$20 per week for a single person on Newstart.

(viii) Inject \$5 million per annum of ongoing core funding to the 15 specialist social security CLCs and programs across Australia and NSSRN as the peak.

4. Improved support to people experiencing domestic violence

Adequate social security and a supportive income support system is critical to enabling many victims to escape violence and rebuild stable lives. There is a strong social, economic and health rationale for taking measures to improve the way Centrelink supports people experiencing domestic violence.

The NSSRN makes a total of 32 recommendations in its major research report, *How well does Australia's social security system support victims of domestic violence?*,² including amendments to the **Social Security Act 1991** (SSA) (Cth) and the **Guide to Social Security Law** (the Guide), as well as improvements to Centrelink's service environment. From the 32 recommendations we identified 8 key measures based on discussions with various stakeholders about which ones could most likely be implemented quickly and easily.

We were pleased to see that on 2 January 2019 changes to the Guide were made by the Department of Social Services (DSS) in response to our recommendations, specifically:

1. Clarifying that the definition of Domestic Violence that was previously limited to Crisis Payment is now a common definition across all payments 1.1.D.235
2. Making reference to Domestic Violence for the purposes of waiving a compensation preclusion period due to special circumstances 4.13.4.20
3. Clarifying that the presence of Domestic Violence may indicate that two people living together may not be a member of a couple 2.2.5.10, and
4. Clarifying that the presence of Domestic Violence may indicate that two people living together under one roof may be separated 2.2.5.30.

² Ibid.

However, there remain significant changes to be made to improve the effectiveness of the support to victims of Domestic Violence, set out as follows:

Debt waiver and prosecutions

Further changes to the Guide are needed where it outlines conditions under which special circumstance provisions allow waiver of a debt. The experience of Domestic Violence is a factor that should be considered, particularly where a person has accrued a debt under duress or coercion and therefore statements or representations may not constitute “knowledge” by the debtor.

Given that more than one third of cases examined during our research involved a debt, often incurred without the debtor being aware they were not being paid the correct payment or rate of payment, this change to the Guide is critical. We wish to ensure that Domestic Violence victims do not end up with debts accrued as a result of abusive relationships, or even worse, prosecuted for fraud. To this end, we recommend that guidelines should make it clear that cases where coercion or duress is a factor should not be referred to the Commonwealth Director of Public Prosecutions.

Continuing to build on the 2 January 2019 amendments to the Guide will enable Centrelink staff to work more effectively in assessing cases of people experiencing Domestic Violence, and ensure consistent, high quality levels of service. This will make interactions more effective and reduce unnecessary costs.

Our focus on changes to the Guide aligns with the income support related themes arising from consultations on the Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children, in particular workforce capacity building in this area. The Guide is an important aspect of workforce upskilling as it is used on a regular basis by Centrelink staff to help them make decisions on a day to day level. It could even be argued that changes to the Guide may be more effective than one-off training.

Crisis Payment

Some of our Report’s remaining key measures involve improving access to Crisis Payment, specifically:

- Increasing the time period from the occurrence of the extreme circumstances within which a claim for Crisis Payment must be made from 7 days to 14 days; and
- Extending the eligibility for Crisis Payment from four to six times per year.

Amending section 3.7.4.20 of the Guide to allow a claim for Crisis Payment within 14 days of the extreme circumstances occurring would better support people who may be a traumatised, seriously injured or hospitalised, or managing other significant complexities in the days following the violent incident. It would also better support those who have difficulty collating the required paperwork to make a claim, particularly where their documents are controlled by the perpetrator of violence.

Extending eligibility frequency for Crisis Payment to six times a year would bring it in line with research referenced by the Department of Human Services (DHS) on the cycle of domestic violence. This would address the needs of clients who are particularly vulnerable, such as in cases where victims of Domestic Violence make multiple attempts to leave a violent relationship before they are successful.

Departmental expert positions and establishment of a Domestic Violence phone line

Expert positions should be created within DHS and DSS with responsibility for coordinating the interface between the two Departments, other government agencies and the community.

Strategies to address Domestic Violence would be improved through the development and communication of expertise and streamlining of policy to service delivery by the appointment of designated specialists in both the DHS and DSS, and a mechanism coordinating focus on this issue within government. To maximise effectiveness, these systems should be transparent and accessible to community agencies to enable effective communication between stakeholders.

Externally, expert positions would be useful to support innovations such as a Centrelink phone line dedicated to assisting people experiencing domestic violence. Preferably the phone line would be staffed with social workers who have the expertise to provide advice relating to social security entitlement, identify the potential impact of the domestic violence on social security payments and issues such as member of a couple assessment, debts and compensation preclusion periods; and make relevant referrals to support services.

The above recommendations are made on the basis of recent case studies drawn from our member centres. However, they are not new and mirror those previously made by the Australian Law Reform Commission (ALRC) in its report from November 2011, *Family Violence and Commonwealth Laws – Improving Legal Frameworks* (Report).³ It is therefore timely that the Government continue to act on its commitment to addressing domestic violence and make it easier for women and their children escaping domestic violence to access Centrelink.

5. Removal or reduction of Newly Arrived Residents Waiting Period for Special Benefit and family payments

The recent passing of the *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived) 2018 Bill* amended the *Social Security Act 1991* to increase the Newly Arrived Residents Waiting Period (NARWP) from two to four years for working age payments, including the payment of last resort, Special Benefit, and Family Tax Benefit A. These measures will disproportionately impact vulnerable migrants such as women and children escaping domestic violence.

We are concerned that people experiencing violence who are unable to access Special Benefit for up to four years will be left with a choice of leaving to become homeless and destitute or be subjected to violence. In certain circumstances where migrants hold particular subclasses of visa, Special Benefit is available if the newly arrived resident has experienced a substantial change beyond their control following their first arrival to Australia. However, the nature of domestic violence is often complex and multifaceted. In circumstances where Domestic Violence has gradually worsened for migrant women following arrival to Australia, we are concerned that it may be difficult for them to demonstrate a substantial change in circumstances beyond their control.

The increase of NARWP has also led to an increase of assurance of support periods. This will have adverse effects for migrants arriving with an assurance of support and trying to escape domestic violence. Our members have seen clients with relationship breakdowns during assurance of support

³ Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011).

periods where the high threshold of Special Benefit prevented people in these circumstances from being able to access support.⁴

The extension of the NARWP runs contrary to the Government's Third Action Plan of the National Action Plan to Reduce Violence Against Women and Their Children⁵ which specifically provides at 3.8 that eligibility requirements for support services should not disempower victims of violence or discourage them from leaving violence relationships, and at 3.8(b) that eligibility requirements be revised to enable more victims of violence to access support.

For these reasons, we call for the reversal of the extension of the NARWP, most urgently for Special Benefit and payments intended to support families.

6. Urgent reform of measures

TCF

NSSRN continues to oppose the TCF as introduced by the Social Services Legislation Amendment (Welfare Reform) Act 2018.⁶ The TCF system of sanctions, including the suspension, reduction or cancellation of payments, has not achieved its primary objective of assisting people to take up employment as it is focused on punitive measures.⁷ It harshly and disproportionately targets Aboriginal and Torres Strait Islanders, single mothers and people under 25.⁸

One of the primary issues with this compliance system is that the financial penalties cannot be waived. As outlined in our submission to the inquiry on "the appropriateness and effectiveness of the objectives, design, implementation and evaluation of Jobactive",⁹ we are concerned that people experiencing crises, such as the onset of psychiatric mental illness or exposure to domestic violence, may struggle to remain engaged with their required job activities and lose access to income despite their vulnerabilities. The experiences of some people may cause them to fully disengage with the system during the time they most require financial stability.

The TCF system does not offer adequate measures to appropriately appeal or challenge demerit point decisions. As the issuing of a demerit point is considered to be a decision by the employment services provider and not a decision made under social security law, the avenues to challenge the demerit point sit outside of the internal review and appeals process under the Social Security Act 1991. This means only decisions to suspend and cancel payments are appealable to a decision maker, as they are deemed to be 'operative decisions' of a Centrelink delegate.¹⁰ As a result, job seekers whose payment suspension has resulted from adversity beyond their control, such as homelessness, will not be able to access

⁴ Yaacoub and Secretary, Department of Social Services (Social services second review) [2018] AATA 4279 (19 November 2018).

⁵ Council of Australian Governments, 'National Plan to Reduce Violence against Women and their Children 2010–2022' (Third Action Plan 2016–2019, 2016).

⁶ *Social Services Legislation Amendment (Welfare Reform) Act (No 26) 2018* (Cth).

⁷ Beth Watts and Suzanne Fitzpatrick, 2018 *Welfare Conditionality*, (Routledge 2018); Stewart, Alasdair and Sharon Wright *Final findings: jobseekers* May 2018 <<http://www.welfareconditionality.ac.uk/wp-content/uploads/2018/05/40426-Jobseekers-web.pdf>>.

⁸ Evidence to Senate Standing Committees on Education and Employment, Jobs and Small Business, Parliament of Australia, Canberra, 24 October 2018.

⁹ National Social Security Rights Network, Submission No 3 to Senate Education and Employment Committee, *the appropriateness and effectiveness of the objectives, design, implementation and evaluation of Jobactive*, 21 September 2018.

¹⁰ Department of Jobs and Small Businesses, *Targeted Compliance Framework Guidelines* (16 July 2018) Jobs Australia <https://docs.jobs.gov.au/system/files/doc/other/targeted_compliance_framework.pdf>.

payments on the date expected, and will be left without income or will need to use the appeals process for an arrears matters.

Given the issues outlined above, we are particularly concerned about the expansion of TCF to other conditionality programs such as ParentsNext.

We recommend the improvement of the system in a manner that will build the agency of participants, introduce greater flexibility to employment pathway plans, provide flexible and holistic assessments models, recognise the complex and varied barriers to employment, and introduce regulation and evaluation of employment services providers. We support Jobs Australia's plan '*I Want to Work: Employment Services 2020*'¹¹ which includes 11 system design principles for the future of employment services with a focus on tailored support and ways to better connect employers with the labour market when they need it and are ready to enter it. We encourage the development of a model that will redesign employment services to meets the needs of people on income support.

ParentsNext

The NSSRN calls for urgent reform of the ParentsNext program as its punitive and discriminatory approach is not achieving its stated objectives.

While ParentsNext is positioned as a supportive pre-employment program that targets parents with children aged 6 months and up to 6 years, it imposes onerous mutual obligation requirements on many parents. Since the introduction of ParentsNext in April 2016, parents who are compulsory participants must engage in education, training or employment to receive their Parenting Payments. They must attend their provider appointments, sign a participation plan and undertake compulsory activity set in the plan.¹² If a parent fails to do this they may have their payments suspended or cancelled as a result of the application of the TCF.¹³

Application of the TCF to ParentsNext is incompatible with the Parenting Payments' objective of providing "financial assistance to principal carers with parenting responsibilities for a young child."¹⁴ Parenting Payments were originally available without mutual obligation requirements in recognition of caring responsibilities and to allow parents to meet the needs of their children.

Jobs Australia has reported that the application of payment suspensions to ParentsNext participants has had unintended outcomes which have resulted in clients being referred to emergency relief to obtain food and a 33 week pregnant woman having her payments suspended as she was unable to report due to being rushed to hospital for special care.¹⁵

¹¹ Commonwealth of Australia, Department of Jobs and Small Business, 'I Want to Work: Employment Services 2020 Report' (2018) <https://docs.jobs.gov.au/system/files/doc/other/final_-_i_want_to_work.pdf>.

¹² *Guide to Social Security Law* 3.5.1.167, accessed 24 January 2018 <<http://guides.dss.gov.au/guide-social-security-law/3/5/1/167>>.

¹³ Ibid.

¹⁴ *Guide to Social Security Law* 1.2.4.10, accessed 24 January 2018 <<http://guides.dss.gov.au/guide-social-security-law/1/2/4/10>>.

¹⁵ Jobs Australia, 'Urgent action required on Targeted Compliance Framework in ParentsNext' (19 December 2018) <<https://www.ja.com.au/news/urgent-action-required-targeted-compliance-framework-parentsnext>>.

In July 2018, the program was expanded nationwide at a cost of \$263 million.¹⁶ The program is estimated to include 68,000 parents. Approximately 96% of participants are women, including 10,000 Indigenous women.¹⁷ It also disproportionately impacts people living in rural areas.¹⁸

By expanding ParentsNext the Government's three broad stated objectives are to:

- target early intervention assistance to parents at risk of long-term welfare dependency,
- help parents identify their education and employment related goals and participate in activities that help them achieve their goals, and
- connect parents to local services that can help them address any barriers to employment.¹⁹

While some parents are able to choose to participate in ParentsNext voluntarily²⁰ most are compulsory participants.²¹

NSSRN would support a program that genuinely assists parents who wish to secure meaningful, productive employment with a career pathway while taking into account the additional pressures parents face. However, conditionality and welfare regimes such as ParentsNext are unlikely to achieve this objective as they do not address the structural barriers for parents trying to re-enter the workforce, such as lack of flexible work opportunities that accommodate parenting responsibilities and lack of affordable child care, and unhelpfully individualise the problem.²²

The existing Welfare to Work system, which already requires single mothers to participate in mutual obligation activities when their youngest turns eight in exchange for their Parenting Payment has not demonstrated an increase in job opportunities or financial security.²³ There is no evidence to suggest that the design of ParentsNext will have any more success in halting the cycle of poverty, or empowering young parents when the opportunities on offer are only limited to the resources of the local service provider.²⁴

¹⁶ With the July 2018 expansion in order for parents to receive parenting payments they are required to actively engage and fulfil obligations under ParentsNext or be subjected to the TCF. Refer to Commonwealth of Australia, 'ParentsNext National Expansion' (Discussion Paper, Department of Employment, 2017).

¹⁷ Commonwealth of Australia, 'ParentsNext National Expansion' (Discussion Paper, Department of Employment, 2017).

¹⁸ Evidence to Senate Standing Committees on Education and Employment, Jobs and Small Business, Parliament of Australia, Canberra, 24 October 2018.

¹⁹ *Guide to Social Security Law*, above n 12.

²⁰ Between April 2016 to June 2017, DHS identified 20,681 parents as potentially eligible for ParentsNext; 20,022 (97 per cent) of these as compulsory participants and 659 (3 per cent) as voluntary participants. Around 66 per cent (13,766) of these participants were identified based on a JSCI assessment. Refer to Commonwealth of Australia, 'ParentsNext Evaluation Report' (Evaluation Report No 30, Department of Jobs and Small Business, 2018) 30.

²¹ Compulsory participant is a parent who meets the following criteria:

- has been in receipt of Parenting Payment (partnered or single) for at least 6 months continuously,
- has a youngest child aged under 6 years,
- has not reported earnings from employment in the previous six months

and meets at least one of Department's classified high risk/high priority criteria of "an early school leaver or not undertaking full time study with a child of at least 6 months of age or have a child aged at least 5 years or be assessed from a DHS questionnaire to be eligible for ParentsNext. Refer to *Guide to Social Security Law*, above n 12.

²² Beth Goldblatt, 'More than unpopular. How ParentsNext intrudes on single parents' human rights', *The Conversation* (online), 16 January 2019 <<https://theconversation.com/more-than-unpopular-how-parentsnext-intrudes-on-single-parents-human-rights-108754>>.

²³ The Power to Persuade, 'Parents vexed? ParentsNext is poorly designed to support mothers into work', 18 October 2018, <<http://www.powertopersuade.org.au/blog/parents-vexed-parentsnext-is-poorly-designed-to-support-mothers-into-work/18/10/2017>>.

²⁴ *Ibid.*

ParentsNext has been positioned as a program that supports parents in identifying education and employment related activities. However it is structured around providers meeting Key Performance Indicators (KPI) that may not align with participants' employment aspirations and goals.²⁵ Unlike the Jobactive work-based activities, ParentsNext providers receive service fees and bonuses based on attendance at job activities.²⁶ With such vested interests to secure financial incentives a Provider may be motivated to push parents to certain outcomes which may mean that a parent's education, employment and personal goals are not genuinely taken into account.²⁷

We are also concerned that such arrangements lead to unnecessary "busy work", rather than genuinely working toward participants' employment goals.²⁸ There are cases where providers have not recognised studying obligations or catered a plan to fit the parents' needs which has caused further stress and compromised their mental health.²⁹

ParentsNext policy does not take into account the limited resources of service providers which do not work with local communities to create new employment opportunities,³⁰ but rather can restrict parents' opportunities as service providers link parents with employers and industries they have an existing relationship with.³¹

With its disproportionate impact on women, ParentsNext is in breach of Australia's international human rights obligations under the International Convention on the Elimination of All Forms of Discrimination against Women, and breaches the International Covenant on Economic, Social and Cultural Rights (ICESCR) when it denies women and their children their right to social security. Furthermore, the national expansion targeting the intensive stream which will target 10,000 Indigenous women, is in contravention of Australia's obligations under the Convention on the Elimination of Racial Discrimination to prohibit and eliminate racial discrimination.

We recommend that ParentsNext be made voluntary, and that funds be reinvested to offer further services and support parents to meet their children's needs. We support Good Shepherd's recommendations³² that Welfare to Work should acknowledge the ongoing and time-intensive nature of parenting. The program needs to take account structural barriers hindering parents from entering the labour market. It should be focused on creating employment opportunities and consider more appropriate ways to support parents by increasing support services available to strengthen community ties and participation in society.

²⁵ Juanita McLaren, Susan Maury and Sarah Squire, *Outside Systems Control my life: The experience of single mothers on Welfare to Work*, (Good Shepherd Australia New Zealand, 2018) <https://goodshp.org.au/media/2179/outside-systems-control-my-life_experience-of-single-mothers-on-w2w_web.pdf>.

²⁶ *Ibid*, 49.

²⁷ *Guide to Social Security*, above n 12.

²⁸ *Guide to Social Security*, above n 12.

²⁹ *Guide to Social Security*, above n 12, 49.

³⁰ *Guide to Social Security*, above n 12.

³¹ Evidence to Senate Standing Committees on Education and Employment, Jobs and Small Business, Parliament of Australia, Canberra, 24 October 2018.

³² *Guide to Social Security*, above n 12.

CDP

NSSRN continues to argue for CDP to be abolished due to the disproportionate impact on Indigenous Australians and the gross contraventions of 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. The impact upon Indigenous Australians is punitive and ineffective in its operation where the more onerous requirements and imposition of financial penalties has been considered to be incompatible with the right to social security³³ as a person will be unable to meet basic necessities during the four week non-payment period.³⁴ Any attempt to introduce the TCF to CDP regions would only cause further harm to Aboriginal and Torres Strait Islander Australians.

It is vital that any remote employment program delivers community development by meeting community needs, delivering meaningful training and ensuring economic development. We continue to support the work of Aboriginal Peak Organisations NT (APONT) which has developed a community driven alternative.³⁵ Their proposal, the Remote Development and Employment Scheme (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."³⁶ The proposal emphasises job creation, incentives to participate (rather than penalties) and recognising cultural priorities.³⁷ It would be managed by an independent Indigenous led board with local governance bodies.

To ensure that Indigenous communities are empowered and that effective community development occurs, we advocate for the following:

- Establish a new remote employment scheme, based on the framework set out in the Fair Work and Strong Communities proposal, which has, as its primary goal, long term improvements in employment rates, increased incomes and empowering local communities.
- Commit to fund the establishment of at least 12,000 new jobs in remote communities to be wholly, or predominantly, created in Indigenous community organisations.
- Commit to establish new governance arrangements for a remote employment scheme that are independent from Government, legislatively based and Indigenous led.
- Commit to making the new scheme bottom-up, not top-down, with the ability for local people to set objectives within the long term goals of the scheme and to adapt program settings to local circumstances.
- Commit that any new program arrangements will not directly or indirectly discriminate against Indigenous people.³⁸

³³ Peter Dwyer, 'Creeping conditionality in the UK: from welfare rights to conditional entitlements' (2004) 19 *Canadian Journal of Sociology* 2, 265-287.

³⁴ Aboriginal Peak Organisations Northern Territory (2017, May), 'Fair Work and Strong Communities: Proposal for a Remote Development and Employment Scheme' (Report). Retrieved from <http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Report_Online.pdf>.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ *Guide to Social Security*, above n 19.

CDC schemes

NSSRN calls for the abolition of compulsory welfare quarantining and finds there is insufficient evidence of positive outcomes to support the decision to extend the CDC and the Income Management (IM) programs to two additional sites³⁹ from early 2019 and across existing sites until 30 June 2020.⁴⁰

The expansion of CDC to the Federal electorate of Hinkler will increase the total number of trial participants from 10,000 to 15,000 and means that the trial will continue to affect particularly vulnerable cohorts including young people⁴¹ and Indigenous people.⁴² The majority of recipients of Newstart Allowance, Youth Allowance and Parenting Payments who are under 35 years old and typically reside within the Bundaberg and Hervey Bay area will become compulsory CDC trial participants.

The stated objectives of the CDC trial are to:

- reduce the amount of money in the community that is available to be spent on alcohol, gambling and illegal drugs,
- determine whether such a reduction decreases violence or harm in trial areas,
- determine whether such arrangements are more effective when community bodies are involved, and
- encourage socially responsible behaviour.

The CDC has been positioned as a program that would help “stabilise the finances and lives of vulnerable families, ensure welfare payments are used as intended, and reduce money available for alcohol and gambling in an effort to reduce social dysfunction where it exists in some communities.”⁴³

However, since 2016 in areas where CDC and IM programs started to operate there has been no adequate baseline evidence to measure the impact of the trial or include any change in social harm.⁴⁴

The Australian National Audit Office (**ANAO**) has reported the lack of adequate baseline data on CDC and IM stated objectives or KPIs makes real assessment of change difficult.⁴⁵

The Government’s rationale for introducing these measures is that IM will assist income support recipients in managing their fortnightly payments — such as Newstart/Youth Allowance, parenting or carer payments, and the Disability Support Pension — for essentials like food, rent and bills.

³⁹ Bundaberg-Hervey Bay region (QLD).

⁴⁰ Ceduna (SA), the East Kimberley (WA) and the Goldfields (WA).

⁴¹ The majority of recipients of Newstart Allowance, Youth Allowance and Parenting Payments who are under 35 years old and typically reside within the Bundaberg and Hervey Bay area will become compulsory CDC trial participants.

⁴² With the addition of the new trial area in Bundaberg and Hervey Bay, the proportion of Indigenous participants across all cohorts will be approximately 33 per cent. Refer to Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, Statement of compatibility with human rights (Statement of compatibility), 4.

⁴³ *Guide to Social Security Law* 8.7.1, accessed 24 January 2019, <<http://guides.dss.gov.au/guide-social-security-law/8/7/1>>.

⁴⁴ “Social Services did not build evaluation into the CDCT design, nor did they collaborate and coordinate data collection to ensure an adequate baseline to measure the impact of the trial, including any change in social harm.” Refer to Australian National Audit Office, ANAO Audit Report No. 19 2012–13, Administration of New Income Management in the Northern Territory, 2013.

⁴⁵ Australian National Audit Office, ANAO Audit Report No. 19 2012–13, Administration of New Income Management in the Northern Territory, 2013.

However, it is apparent that CDC and IM programs do not do this. Instead the following data from the ORIMA evaluation demonstrates how welfare quarantining means people are going without food and basic necessities:

- At Wave 1⁴⁶ CDC holders reported that they had ‘run out of money to buy food’, and by Wave 2⁴⁷ the figure had increased to 52%.
- At Wave 1 32% of CDC holders reported that they had ‘run out of money to pay for things that ... children needed for school, like books’, and by Wave 2 the figure had increased to 45%.
- At Wave 1 31% of CDC holders reported that they had ‘run out of money to pay for essential (non-food) items for ... children’, and by Wave 2 the figure had increased to 44%.
- At Wave 1 50% of CDC holders reported that they had needed to ‘borrow money from family or friends’ to survive, and by Wave 2 the figure had increased to 55%.

These alarming statistics⁴⁸ demonstrate that for many participants CDC makes it harder for people to purchase basic necessities, support their families and access second hand services in the cash economy⁴⁹ and is pushing many Indigenous Australians deeper into poverty. CDC is denying many people their right to social security.

The most recent strategic review report undertaken by Queensland University of Technology on IM in Cape York notes there is limited valid evidence supporting the effectiveness of CDC trial and its expansion. Some of the limitations of the report include:

- “some level of sampling bias in qualitative data relied upon for this study”⁵⁰
- “the geography of various administrative datasets is not always well matched to the geography of Indigenous communities”⁵¹
- “the core limitation of the quantitative analysis of the aggregate data is the inability to isolate the impact of CYIM.”⁵²

⁴⁶ In February 2017 the Department of Social Services released a ‘Wave 1’ evaluation undertaken by Orima Research of the CDC trials in Ceduna and Kununurra. Refer to ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report*, released by the Department of Social Services (August 2017), 17.

⁴⁷ In August 2017 Wave 2 Final Evaluation Report undertaken by Orima Research of the CDC trials in Ceduna and Kununurra (Orima 2017).

⁴⁸ ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report*, released by the Department of Social Services (August 2017), 17.

⁴⁹ CDC limits the cash they have to pay for informal renting arrangements, second-hand goods, cash purchases of locally grown produce, and pocket money for children. Refer to Doctor Elise Klein, ‘The Cashless Debit Card causes social and economic harm – so why trial it again?’, *The Conversation* (online) 30 March 2017 <<https://theconversation.com/the-cashless-debit-card-causes-social-and-economic-harm-so-why-trial-it-again-74985>>.

⁵⁰ John Scott, Angela Higgison, Zoe Staines, Liussa Zhen, Vanessa Ryan, Mark Lauchs, ‘Strategic review of Cape York Income Management’, (Report: November 2018); “However, there is likely still some level of sampling bias in the qualitative data relied upon for this study, which should be considered when interpreting the qualitative findings’, 5.

⁵¹ *Ibid.*, 7.

⁵² *Ibid.*

The ORIMA evaluation also had discrepancies in the reporting on drug and alcohol consumption and failed to report local data on ambulance and alcohol-related call outs, domestic violence and police call-outs, which have increased since the trials began.⁵³

Lack of effective consultation and engagement with community bodies is apparent in the design failures of the program. A clear example of a design flaw resulting from a lack of community consultation is that CDC is operated online. When a connection error results, a PIN is to be entered for the transaction to be validated. A failure to connect means a person is unable to access food, or basic necessities until reconnection occurs. In these circumstances, it has been reported that Indigenous Australians felt shame and were publicly humiliated.⁵⁴ This has been recognised by Department of Social Services which has acknowledged that communications to participants could be improved.⁵⁵

This is similarly supported by ANAO which undertook an independent audit⁵⁶ and found Local Partners had recommended Department of Social Services needed to participate in “more face-to-face information from knowledgeable staff and support, as many had not attended the public meetings or asked questions and there was some confusion and misinformation among participants.”⁵⁷

The most recent report on IM in Cape York⁵⁸ also indicates that “any future extension of the CYWR, FRC, CYIM and/or similar models should include careful consideration of how coalitions of support for reform can be established and nurtured over time.”⁵⁹

As the Government’s evaluation data is analytically and methodologically flawed⁶⁰ there is insufficient evidentiary basis to support continuation let alone expansion of compulsory welfare quarantining. We recommend that the \$25.5 million currently dedicated to CDC be reinvested in programs that go towards ensuring members of the community have meaningful lives with access to adequate healthcare, housing opportunities, education, literacy and employment.

CDC and IM programs should be voluntary and opting out should be made easier.⁶¹ We urge that Government effectively respond to various commissioned reports which clearly highlight the core issues with such programs such as lacking consultation⁶², making people feel confronted⁶³, putting them to shame and “making their lives worse”.⁶⁴ We support holistic support-based services to address the

⁵³ Christopher Knaus, ‘Family violence rates rise in Kimberley towns with cashless welfare’, The Guardian (online), 12 January 2018 <<https://www.theguardian.com/australia-news/2018/jan/12/family-violence-rates-rise-in-kimberley-towns-with-cashless-welfare>>.

⁵⁴ Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, Statement of compatibility with human rights (Statement of compatibility), p. 4.

⁵⁵ The Auditor-General, *The Implementation and Performance of the Cashless Debit Card Trial*, released by Department of Social Services (July 2918), 47.

⁵⁶ The objective of the audit was to assess the Department of Social Services’ implementation and evaluation of the CDCT. Refer to The Auditor-General, *The Implementation and Performance of the Cashless Debit Card Trial*, released by Department of Social Services (July 2918), 47.

⁵⁷ *The Auditor-General*, above n 55, 2.5.

⁵⁸ Scott, Higgison, Staines, Zhen, Ryan, Lauchs, above n 44.

⁵⁹ *Ibid.*

⁶⁰ Eva Cox, ‘Much of the data used to justify the welfare card is flawed’, The Guardian (online), 7 September 2017 <<https://www.theguardian.com/commentisfree/2017/sep/07/much-of-the-data-used-to-justify-the-welfare-card-is-flawed>>.

⁶¹ Opting out of the CDC is technically available on the grounds of risk to mental, physical or emotional wellbeing, and involves an appeal to the Department of Social Services, an assessment by a Centrelink social worker, and then further review by the Department. This process is by no means transparent, and worryingly, the Secretary is not required to consider the impacts of the CDC on a person’s wellbeing *prior* to them becoming a trial participant.

⁶² Cox, above n 60.

⁶³ ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report*, released by the Department of Social Services (August 2017), 17.

⁶⁴ There is subsequently a sense that CHER, the FRC and CLAIM have been imposed, rather than agreed to. Refer to John Scott, Angela Higgison, Zoe Staines, Liuissa Zhen, Vanessa Ryan, Mark Lauchs, ‘Strategic review of Cape York Income Management’, (Report: November 2018), 10.

broad social and economic disadvantages in the trial community areas. Any policy or law development impacting on a community must involve extensive consultation and be led by community members, particularly in Indigenous communities.

7. Raise the rate

We join the call for an increase in payments as a necessary course of action to address growing inequality in our society. Lifting the single rate of Newstart, Youth Allowance and related payments would be the most effective step to reduce poverty in Australia.

We strongly urge Government to:

- Increase the single rates of Newstart, Youth Allowance and related payments by \$75 per week to reduce poverty and inequality in Australia.
- Index payments to wages as well as CPI to ensure they maintain pace with community living standards.
- Increase Commonwealth Rent Assistance by 30% or \$20 per week for a single person on Newstart.

8. Adequate and stable funding to Specialist Social Security CLCs

Social Security Legal Need in Australia

Research conducted into legal need over the last decade demonstrates that there is significant social security legal need in Australia. According to the Legal Australia Wide Survey (**LAW Survey**)⁶⁵ and the Law Council of Australia⁶⁶, socio-economically disadvantaged people who have complex needs and face significant obstacles in identifying and resolving legal problems are among those most in need of assistance to address legal issues relating to social security entitlements.⁶⁷

In 2017-18, the Law Council of Australia's Justice Project (**The Justice Project**) embarked on an extensive review of the state of access to justice in Australia for people experiencing significant disadvantage.⁶⁸ The Justice Project further found that many people experience economic disadvantage have social security needs which, if left unresolved, may compromise their safety, rights or entitlements.⁶⁹ In relation to the social security system, difficulties often arise when people are not confident or capable of expressing themselves verbally or in writing.⁷⁰

The LAW Survey found that people on government payments were more likely to experience legal problems reflecting socioeconomic disadvantage. They had increased odds of problems from the following problem groups in at least one or a few jurisdictions: family, government, health, housing and

⁶⁵ Law and Justice Foundation of New South Wales, *Legal Need in Australia-Wide Survey* (2012) 13.

⁶⁶ Law Council of Australia, *Justice Project* (2018).

⁶⁷ *Ibid.*

⁶⁸ Law Council of Australia, above n 65.

⁶⁹ *Ibid.*, 13.

⁷⁰ Liz Curran and Mary Anne Noone 'Access to Justice: a new approach using human rights standards' (2008) 15 *International Journal of the Legal Profession* 195, 213.

rights. The high levels of government problems were largely due to problems related to receipt of government payments.⁷¹

The overall analysis of the survey results concluded that socially disadvantaged groups experienced a high prevalence of legal problems and lower personal capacity to resolve them, often resulting in no action being taken and poor outcomes.⁷²

The difficulty of identifying and dealing with a social security legal issue was also identified by Curran and Noone.⁷³ Curran and Noone undertook a study specifically looking at the experience of social security recipients in navigating the system. They found that many people and service providers did not recognise their problems with Centrelink could be a legal issue and did not think about contacting a legal service for advice.⁷⁴

In its final report, The Justice Project noted the impact of certain laws, policies and practices on driving the legal needs of people experiencing disadvantage. It highlighted as an example the extraordinary pressure which was placed on community legal centres (CLCs) arising from the rollout of Centrelink's Employment Income Confirmation System (colloquially known as Robodebt). Consequently one of the recommendations of the Justice Project was to invest "significant additional resources..... to address critical civil and criminal legal assistance service gaps."⁷⁵

Unlike other areas of law such as family or criminal law, there is no private sector equivalent in social security law. Compounding this difficulty, many top tier law firms who are major providers of pro bono services are conflicted out of social security matters because they do government work. The Australian Pro Bono Centre has reported that social security law is one of the most rejected pro bono areas.⁷⁶ Accordingly very little of this work is absorbed by the private sector. Even in some of the larger jurisdictions where Legal Aid Commissions and other CLC's also undertake some social security work, demand still out numbers supply.

Adequate and secure funding to Specialist Social Security CLCs

The social security system plays a critical role in supporting individuals and families in Australia when they do not have the ability or means to support themselves. Adequate and secure funding for specialist social security community legal assistance services is needed to ensure that vulnerable and disadvantaged people who are adversely affected by a Centrelink decision can achieve a fair resolution to their issue.

Social security legal matters impact members of the community when they are most vulnerable. Many people who receive, or who are seeking to access Centrelink payments are among the most vulnerable and disadvantaged in our society. Specialist social security CLCs often assist clients whose health, social

⁷¹ Christine Coumarelos et al, Law and Justice Foundation of New South Wales, Legal Australia-Wide Survey: Legal need in Australia, 2012, p 177.

⁷² Law Council of Australia, above n 65, 4.

⁷³ Curran and Noone, above n 70.

⁷⁴ Curran and Noone, above n 70.

⁷⁵ Curran and Noone, above n 70, 2.1.

⁷⁶ Commonwealth and Canberra, Productivity Commission of Inquiry into Access to Justice Arrangements, Final Report (2014), 812.

and emotional difficulties are exacerbated by the financial instability they experience while trying to resolve their disputes with Centrelink.

Specialist social security legal assistance and representation is critical in supporting and empowering people to navigate and resolve their legal problems with Centrelink. Specialist social security CLCs have been delivering expert and specialised legal assistance services in Australia for over 30 years. There are 15 CLCs across Australia which specialise in social security and family assistance law, policy and administration. The centres are located in all states and territories. These centres include stand alone, statewide specialist centres which exclusively focus on social security law matters, centres which offer dedicated social security legal services as part of a mix of specialist legal services, and geographically based/generalist centres that provide a specialist program as part of a suite of legal assistance services.

Specialist social security CLCs are important first points of contacts for people affected by a Centrelink decision. They assist vulnerable and disadvantaged Australians by:

- Information and referrals, legal advice and casework, advocacy in negotiations with Centrelink and at the Administrative Appeals Tribunal (**AAT**) and non-legal support;
- Designing and delivering community legal education programs and community development activities directed at local communities, targeted groups and other professionals;
- Working collaboratively across the legal assistance sector and community sector more generally to raise awareness of social security legal issues and the availability of specialist social security legal services; and
- Engaging at a number of levels, in policy and law reform aimed at highlighting and addressing systemic issues.

The positive impact on clients and the broader community of having social security expertise developed and maintained in specialist social security legal services is evidenced by:

- **Improved outcomes for clients** as a result of specialist social security legal services engagement with the community and provision of specialist legal assistance as verified by independent research commissioned by NSSRN in 2014 and NSSRN's major research into the relationship between social security and domestic violence in 2018.
- **Increased efficiency in the justice system** which specialist social security legal services achieve by representing disadvantaged clients and assisting capable clients to advocate for themselves.
- **Positive changes to social security policy and the administration of the system** as a result of the NSSRN and its members via policy submissions and engagement with government based on the experience of its member centres' clients.
- **Capacity building which specialist social security legal services provide to other legal and community organisations**, harnessing their social security expertise to enable these organisations to meet the social security needs of their clients by providing training and resources, secondary consultations and referral pathways.

Independent research⁷⁷ commissioned by the NSSRN found that legal services provided by its member centres made a significant, and in some cases vital, difference to their clients' lives. Once they were financially stable, most of these clients were able to reconnect with family and friends, and in some cases see their children again. Some of the clients had now returned to work or study and some had decided to volunteer their time.

Although specialist social security legal services have been deemed critical in ensuring access to justice it is recognised that the 'sector remains chronically underfunded.'⁷⁸

The NSSRN is seeking an initial injection of \$5 million per annum of ongoing core funding to the 15 specialist social security CLCs and programs across Australia, and to the NSSRN itself in its role as a peak sector body. Further increases in core funding will be sought over the next three to five years. This amount will go some way towards meeting the legal need and demand for services outlined earlier in this section, towards ensuring the longer term sustainability of the network of social security specialists, and ultimately towards providing access to justice for very vulnerable and disadvantaged Australians. The proposed initial investment would significantly increase the capacity of existing centres and programs to assist clients and the workers who support them, to provide education and resources, and to identify and propose appropriate responses to policy and systems issues. It would also ensure that a critical and sustainable mass of specialist expertise and experience is maintained within organisations and across the CLC sector.

In the early 1990s, following the establishment of the Social Security Appeals Tribunal as a formal mechanism for review of administrative decision-making regarding social security entitlements, the Federal Government provided some funding for specialist social security CLCs/programs and promised a further \$3 million towards appropriately funding the services. That promise was not fully met. More than 25 years later the gap between current funding levels and need has been amplified. The figure of \$5 million has been arrived at with reference to estimates by the National Association of Community Legal Centres that CLC funding should be calculated at \$130,000.00 per full time effective position, and also work undertaken by some social security specialist CLCs to estimate their core funding needs. As an example, Social Security Rights Victoria has assessed that a core funding level equivalent to nine full time effective positions would enable it to thrive and increase its effectiveness in its role as a Victoria's state-wide, specialist social security CLC. The proposed core staffing would include specialist legal practitioners, paralegal, financial counselling, management and administrative roles.

In addition to the above recommendations we welcome the *Social Security Commission Bill 2018* which proposes to establish an independent body that will provide advice to Parliament on the minimum levels for social security payments to ensure that all recipients can meet an accepted contemporary minimum standard of living. We hope the Commission will be able to inform Parliament by undertaking social security payment reviews which can be used to implement services that assist people to participate in the job market.

⁷⁷ Susan Bell, 'How does the National Welfare Rights Network add value to clients?' (Research Paper, National Social Security Rights Network, 2014).

⁷⁸ Commonwealth and Canberra, above n 76.

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