EXPLANATORY STATEMENT

Social Security (Administration) (Vulnerable income management areas)
Specification 2012

The Social Security (Administration) (Vulnerable income management areas)
Specification 2012 (the Specification) is made under subsection 123UCA(3) of the Social Security (Administration) Act 1999 (the Act). The Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform, as well as making the Determination in her own capacity, is also making it on behalf of the Minister for Employment and Workplace Relations and the Minister for Tertiary Education, Skills, Science and Research.

Background

As part of the Building Australia’s Future Workforce package, income management was introduced into five new sites on 1 July 2012. The income management measures introduced included:

- people referred for income management by State child protection authorities, where they assess that a child is at risk of neglect (the child protection measure);
- people assessed by Centrelink Social Workers as being vulnerable by reference to factors including financial crisis and risk of homelessness (vulnerable welfare payment recipient measure); and
- people who volunteer for income management (voluntary income management).

Each measure was commenced by separate instrument. The vulnerable welfare payment recipient measure was commenced by declaring the areas as ‘declared income management areas’ (under the Social Security (Administration) (Declared income management areas) Determination 2012). However, the current provisions of the Act result in such declaration also commencing income management measures applying to disengaged youth and long-term welfare payment recipients.
Legislative change had previously been proposed to allow these measures to be separately declared. The Social Security Legislation Amendment Bill 2011 was introduced into Parliament on 23 November 2011, proposing, at Part 2 of Schedule 1 to the Bill, separation of the three measures currently jointly commenced by declaring an income management area. That Bill received Royal Assent on 29 June 2012. Schedule 1 to the Social Security Legislation Amendment Act 2011 was introduced into Parliament on 23 November 2011, proposing, at Part 2 of Schedule 1 to the Bill, separation of the three measures currently jointly commenced by declaring an income management area. That Bill received Royal Assent on 29 June 2012. Schedule 1 to the Social Security Legislation Amendment Act 2012 commences 28 days after Royal Assent. Upon commencement of this Schedule, the power to declare a ‘declared income management area’ in section 123TFA of the Act will be repealed, and replaced by powers for the Minister to specify, by legislative instrument, a State, a Territory or an area for the separate purposes of each of the three income management measures.

A consequence of this repeal is that the current declared income management areas in each of New South Wales, Queensland, South Australia, Victoria and the Northern Territory will lapse. These areas must be specified by newly made legislative instruments to continue the current income management measures applying in each area.

Purpose

This Specification specifies five local government areas located in New South Wales, Queensland, South Australia and Victoria, as well as the entire Northern Territory in order to continue the vulnerable welfare payment recipient measure in those areas. Schedule 1 covers New South Wales, Schedule 2 covers Queensland, Schedule 3 covers South Australia and Schedule 4 covers Victoria.

The Specification is a legislative instrument and commences on 27 July 2012 being the commencement of Schedule 1 to the Social Security Legislation Amendment Act 2012.

Explanation of the Provisions

Section 1 states the name of the Specification.

Section 2 provides that the Specification commences on 27 July 2012.

Section 4 provides definitions for terms that are used in the Specification.

Any references to the Act are references to the Social Security (Administration) Act 1999.

Sections 5, 6, 7, 8 and 9 specify areas for the purposes of the vulnerable welfare payment recipient measure.
As an interim measure, the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2012* commenced from 1 July 2012, and specified that the class of persons whose usual place of residence is within the five local government sites are exempt welfare payment recipients. This enabled the Secretary to determine that these persons are not subject to income management under either the disengaged youth or long-term welfare payment recipient measures. This exemption is no longer required upon commencement of this instrument, as the disengaged youth and long-term welfare payment recipient measures will cease for these sites. Accordingly, section 3 revokes the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2012*.

**Consultation**

No new consultation with the affected States and Territory has been undertaken because the Specification gives continuing effect to existing income management arrangements.

Consultation on the Specification was undertaken with the Department of Employment and Workplace Relations and with the Department of Industry, Innovation, Science, Research and Tertiary Education.

**Regulatory Impact Analysis**

The Specification is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Social Security (Administration) (Vulnerable income management areas) Specification 2012

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Overview of the Legislative Instrument

Part 3B of the Social Security (Administration) Act 1999 (the Act) establishes an income management regime that applies to recipients of certain welfare payments. If a person is subject to the income management regime under Part 3B, the Secretary will deduct amounts from the person’s relevant welfare payments and credit those amounts to the person’s income management account. The Secretary may then debit amounts from the person’s income management account, in accordance with Part 3B, for the purpose of taking actions directed to meeting the priority needs of the person or his or her dependants, such as food, clothing and shelter.

Under section 123UCA of the Act a person will be subject to the vulnerable welfare payment recipient measure of income management if they fulfil certain criteria. One of these criteria is that the person’s usual place of residence is within a State, a Territory or an area specified in an instrument.

The purpose of the Social Security (Administration) (Vulnerable income management areas) Specification 2012 (the Specification) is to provide specified vulnerable income management areas, including the whole of the Northern Territory and specified areas of New South Wales, Queensland, South Australia and Victoria.

Human rights implications

The Specification will not change the locations where vulnerable income management operates. The Specification was drafted to address the legislative changes made by the Social Security Legislation Amendment Act 2012. To the extent that the instrument continues the operation of vulnerable income management, it is consistent with human rights.
The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognised ‘the right of everyone to social security, including social insurance’. That right requires a country, within its maximum available resources, to provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

People subject to the vulnerable measure of income management retain their right to social security while being provided a mechanism to acquire the essential items outlined in Article 9 of the ICESCR. The requirement to allocate a percentage of their social security payments on self-maintenance, via food, clothing and housing costs, is a limitation which supports the aim of this right.

The right to an adequate standard of living

Article 11.1 of the ICESCR states that everyone has the right to ‘an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’ and that ‘appropriate steps’ be taken to ‘ensure the realization of this right’. Further to this, article 11.2 of the ICESCR states that ‘measures, including specific programmes,’ should be taken in ‘recognizing the fundamental right of everyone to be free from hunger’.

Through the vulnerable measure of income management, 50 per cent of a person’s income support and family payments are directed to pay for life’s essentials. Income management is a tool to stabilise a person’s circumstances and ease immediate financial stress. It promotes ‘continuous improvement to living conditions’ by ensuring that money is available for priority goods such as food, clothing and housing, and providing a tool to help people budget.

The right to self-determination

Article 1 of the ICESCR states that ‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.
Income management does not impact a person’s political status. It directs 50 per cent of their social security payments towards priority goods and services such as food and rent and prohibits that portion of their payments being spent on excluded items such as alcohol, tobacco, pornography and gambling. These spending constraints do not impact a person’s right to pursue their economic, social or cultural development. In assisting vulnerable people to meet their priority needs, income management provides people with more financial stability, so they can better pursue their economic, social and cultural development.

The limitation of Rights under the ICESCR

Article 4 of the ICESCR provides that a State may limit the rights outlined in the Convention ‘only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’.

As noted in the above paragraphs, the Specification, in supporting the application of the vulnerable measure of income management does not unreasonably limit a person’s rights to dispose of their resources. The purpose of these limitations is to help vulnerable people stabilise their circumstances and address issues of vulnerability. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

Conclusion

The Specification is compatible with human rights. It protects human rights by ensuring that 50 per cent of the income support payments of vulnerable people are directed towards meeting their priority needs. This limitation is reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

The Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform