

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Social Security (Administration) Act 1999

Social Security (Administration) (Excluded circumstances – Queensland Commission) Amendment Specification 2016

Purpose

The *Social Security (Administration) (Excluded circumstances – Queensland Commission) Amendment Specification 2016* ('the Specification') is made for the purposes of Part 3B of the *Social Security (Administration) Act 1999* ('the Act').

The purpose of the Specification is to specify that a person may become subject to income management following a notice given by the Family Responsibilities Commission under section 123UF of the Act if that person resides in the Doomadgee area.

The Specification is made by the Minister for Social Services.

Background

The *Social Security (Administration) (Excluded circumstances – Queensland Commission) Specification 2014* ('the 2014 Specification') specifies the circumstances in which a person will not become subject to income management following a notice given by the Family Responsibilities Commission ('FRC') under section 123UF of the Act.

This Specification expands the definition of "welfare reform community area" to include the Doomadgee area.

"Welfare reform community area" is defined in the *Family Responsibilities Commission Act 2008* (Qld) ('FRC Act') to mean an area prescribed by regulation as a welfare reform community area. The *Family Responsibilities Commission Regulation 2008* (Qld) ('FRC Regulation') includes a prescription of the area of the Aurukun Shire Council, Coen area, area of the Doomadgee Aboriginal Shire Council, Hope Vale area and Mossman Gorge area as prescribed welfare reform community areas under the FRC Act.

The Specification amends the circumstances in which income management under section 123UF of the Act will apply to a person to include Doomadgee area as a welfare reform community area.

This Specification means that a person may become subject to income management under section 123UF of the Act on the basis of residence in the Doomadgee area from 11 April 2016.

Commencement

This Specification commences on 11 April 2016 following its registration.

Consultation

Consultation was undertaken on the Specification with the Commonwealth Department of Human Services, Department of the Prime Minister and Cabinet, the Queensland Ministers for Employment and Industrial Relations, and Aboriginal and Torres Strait Islander Partnerships.

The Queensland Minister for Employment and Industrial Relations, Minister for Aboriginal and Torres Strait Islander Partnerships, the Hon Curtis Pitt MP wrote to the former Minister for Social Services on 22 June 2015 requesting income management for the Cape York Welfare Reform community of Doomadgee. The Minister for Indigenous Affairs, the Hon Nigel Scullion MP, met with Minister Pitt on 4 August 2015 to discuss a variety of issues including clarifying the funding arrangements for the Family Responsibilities Commission in north Queensland. The Department of Social Services recommended that income management be introduced to Doomadgee for the Families Responsibilities Commission to use as it does in other Cape York communities.

Regulation Impact Statement (RIS)

The Specification is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 states the name of the Specification.

Section 2 provides that the Specification commences on 11 April 2016 following its registration.

Section 3 provides that the Specification amends the *Social Security (Administration) (Excluded circumstances – Queensland Commission) Specification 2014*.

Schedule 1

Item 1 inserts the definition of “Doomadgee area”.

“Doomadgee area” is defined in section 3 in the same way as it is defined in the FRC Regulation by reference to the Doomadgee Aboriginal Shire Council. It is intended that this council would have the same meaning as it does under Queensland law.

Item 2 omits and inserts a new definition of “Welfare reform community area” to include the Doomadgee area.

“Welfare reform community area” is defined by reference to the Aurukun area, Coen area, Doomadgee area, Hope Vale area and Mossman Gorge area. These areas are also prescribed as “welfare reform community areas” under the FRC Act and FRC Regulation.

Item 3 omits and inserts section 4 to specify the circumstances for paragraphs 123UF(1)(d) and 123UF(2)(e) of the Act.

Subsections 123UF(1) and (2) provide when a person becomes subject to income management following a notice given by the FRC. Paragraphs 123UF(1)(d) and 123UF(2)(e) provide that the notice must not have been given in such circumstances (if any) as are specified in a legislative instrument made by the Minister for the purposes of those paragraphs.

Section 4 specifies that a circumstance for paragraphs 123UF(1)(d) and 123UF(2)(e) is that the notice is given in respect of a person where:

- the person’s usual place of residence is an area other than a welfare reform community area; and
- the person’s usual place of residence was not:
 - on 1 July 2008 in the Aurukun area, Coen area, Hope Vale area or Mossman Gorge area; or
 - on 11 April 2016 in the Doomadgee area; and
- the person has not lived for 3 months or more:
 - in the Aurukun area, Coen area, Hope Vale area or Mossman Gorge area since 1 July 2008; or
 - in the Doomadgee area since 11 April 2016.

This Specification means that a person may become subject to income management under section 123UF of the Act on the basis of residence in the Doomadgee area from 11 April 2016.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Excluded circumstances – Queensland Commission) Amendment Specification 2016

The Specification 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. Subsections 123UF(1) and (2) of the Act provide for when a person becomes subject to the income management regime following a notice given to the Secretary by the Queensland Commission. The effect of the definition of "Queensland Commission" in section 123TC of the Act and *Social Security (Administration) (Excluded circumstances – Queensland Commission) Specification 2014* ('2014 Specification') is that the FRC is the Queensland Commission.

If other legislative circumstances are met, a person will become subject to income management if the notice from the FRC is given under a law of Queensland (paragraphs 123UF(1)(c) and 123UF(2)(d) of the Act).

The FRC relies on provisions in the *Family Responsibilities Commission Act 2008* (Qld) to provide notices to the Secretary. Paragraphs 123UF(1)(d) and 123UF(2)(e) of the Act allow for circumstances to be specified by the Minister in a legislative instrument in which a person will not become subject to income management following a notice given by the FRC.

Section 123TGAA of the *Social Security (Administration) Act 1999* (the Act) provides that the Minister may, by legislative instrument, determine that a specified department (or part of a department), a body or an agency of a State or Territory is a recognised State/Territory Authority for the purposes of Part 3B of the Act. The Determination is made under this section, specifying the Family Responsibilities Commission (the Commission) as a recognised State Authority.

The Determination also determines that Queensland is a recognised State or Territory, such that a Queensland authority may be recognised, and determines that the deductible portion of an instalment of a category I welfare payment is 60, 75 or 90 per cent, in order to match deductions from welfare

payments that would otherwise apply under the Cape York measure of income management.

The *Family Responsibilities Commission Act 2008* (Qld) established the Family Responsibilities Commission which commenced operating on 1 July 2008. The Commission is an initiative of the partnership between the four Cape York communities of Aurukun, Coen, Hope Vale, Mossman Gorge, and Doomadgee, the Queensland and Australian Governments and the Cape York Institute for Policy and Leadership.

The purpose of the Commission is to support the restoration of socially responsible standards of behaviour and to assist community members to resume and maintain primary responsibility for the wellbeing of their community and the individuals and families within their community.

One function of the Commission is to issue a notice requiring that a particular individual be subject to income management so that a percentage of certain income support and family payments can be spent on priority goods and services.

The Commission has been giving notices for income management for several years however, this instrument will change the mechanism through which DHS can accept a referral.

The key objectives of income management under the Act are to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependants;
- help affected welfare payment recipients to budget so that they can meet their priority needs;
- reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography;
- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments; and
- encourage socially responsible behaviour, particularly in the care and education of children.

Under this measure of income management a percentage of a person's income support payment, as specified by the Commission, is directed towards priority items, such as food, housing, clothing and utilities, and cannot be spent on alcohol, tobacco, pornographic material and gambling products. The flexible percentage will allow the Commission to deal with individuals who, despite having come before the Commission repeatedly, have not changed

their behaviour. It was requested by the Commission, Cape York Institute and Queensland Government.

Human rights implications

The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises *'the right of everyone to social security, including social insurance'*. The UN Committee on Economic, Social and Cultural Rights has stated that implementing this right requires a country to, within its maximum available resources, 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'.

Income management does not reduce the amount of a person's social security entitlement. Rather, it provides a mechanism to ensure that certain recipients of social security entitlements use a proportion of their entitlement to acquire essential items, including all of those referred to by the UN Committee. The UN Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'.

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 this measure of income management, 60, 75 or 90 per cent of a person's income support and family payments are directed to pay for life essentials. Income management is a tool to stabilise a person's circumstances and ease immediate financial stress. It ensures that money is available for priority goods such as food, clothing and housing, and provides assistance to help people to budget. Income management supports this right by ensuring people have appropriate resources available to maintain an adequate standard of living, by ensuring a proportion of their welfare payments are directed towards the essential items specified in this part of the convention.

The rights of children

By ensuring that a portion of income support payments is used to cover essential goods and services, income management can improve living conditions for the children of income support recipients. It thereby advances the right of children to benefit from social security, the right of children to the highest attainable standard of health and the right of children to adequate standards of living (articles 26, 24 and 27 of the Convention on the Rights of the Child, respectively).

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'*.

Under this measure a specified percentage of a person's welfare payments must be spent on priority goods and services such as food and rent. While this measure does limit a person's ability to freely dispose of all of their resources it does not impact on their right to freely pursue their economic, social or cultural development. This limitation is to ensure that the essential needs of vulnerable people are met, and provide them with more financial stability, so they can better pursue their economic, social and cultural development.

The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided for in a number of the seven core international human rights treaties to which Australia is a party, most relevantly the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (the CERD). In particular, Article 5 of the CERD requires parties 'to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law', notably in the enjoyment of 'the right to ... social security and social services' (Article 5(e)(iv)). Discrimination is impermissible differential treatment among persons or groups that result in a person or a group being treated less favourably than others, based on a prohibited ground for discrimination, such as race. However, the UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.

The Specification does not in its terms discriminate on the basis of race. Anyone who resides in the region (regardless of race), will be eligible for income management, so long as the other eligibility criteria are met.

The Doomadgee area is also only one of the geographical areas in which income management has been introduced in the Cape York. The programme was also introduced in partnership with the Families Responsibilities Commission and between the four Cape York communities of Aurukun, Coen, Hope Vale, Mossman Gorge, and Doomadgee, the Queensland and Australian Governments and the Cape York Institute for Policy and Leadership.

The introduction of income management in the Doomadgee area are reasonable and non-discriminatory and will be used as it does in other Cape York communities by the Families Responsibilities Commission.

The Queensland Minister for Employment and Industrial Relations, Minister for Aboriginal and Torres Strait Islander Partnerships, the Hon Curtis Pitt MP wrote to the former Minister for Social Services on 22 June 2015 requesting income management for the Cape York Welfare Reform community of Doomadgee.

Conclusion

The Specification is compatible with human rights. Income management will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependants whilst also helping to improve their budgeting skills so they can meet their priority needs. To the extent that they may limit human rights those limitations are 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 Christian Porter MP, Minister for Social Services