EXPLANATORY STATEMENT

Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013

Summary

The *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013* (the ***Principles***) are made for the purposes of subsection 123UGA(2) of the *Social Security (Administration) Act 1999* (the ***Act***).

The Principles are made by the Minister for Families, Community Services and Indigenous Affairs, and Minister for Disability Reform, both in her own capacity as well as on behalf of the Minister for Employment and Workplace Relations and the Minister for Higher Education and Skills.

Background

Part 3B of the Act sets up an income management regime for recipients of certain social welfare payments, including the income management of persons under the vulnerable welfare payment recipient measure. The vulnerable welfare payment recipient measure is directed at people who are vulnerable to factors including financial crisis, economic abuse and homelessness or risk of homelessness.

Section 123UCA of the Act sets out the circumstances in which a person is subject to income management under the vulnerable welfare payment recipient measure. A person is subject to the income management regime under this provision if:

(a) the person is an eligible recipient of a category H welfare payment; and

(b) the person's usual place of residence is within a State, a Territory or area specified by the Minister for the purposes of section 123UCA; and

(c) the person is a vulnerable welfare payment recipient; and

(d) if the person has a payment nominee – the payment nominee is not an excluded payment nominee; and

(e) the person is not subject to the income management regime under sections 123UC, 123UD, 123UE, 123UF or 123UFAA of the Act.

A person is a vulnerable welfare payment recipient for the purposes of paragraph 123UCA(1)(c) of the Act if the Secretary makes a written determination under subsection 123UGA(1) that the person is a vulnerable welfare payment recipient.

In making a determination under subsection 123UGA(1), the Secretary must comply with any decision-making principles made by the Minister. Subsection 123UGA(2) of the Act provides that the Minister may make decision-making principles that the Secretary must comply with in making a determination under subsection 123UGA(1) that a person is a vulnerable welfare payment recipient for the purposes of the income management regime under Part 3B of the Act.

The Secretary may vary or revoke such a determination under subsection 123UGA(5) of the Act. In doing so, subsection 123UGA(6) requires the Secretary to comply with the Principles in deciding whether to vary or revoke a determination that a person is a vulnerable welfare payment recipient.

Purpose

The Principles have been made for the purposes of subsection 123UGA(2) of the Act. They replace the existing *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2012* (the ***2012 Principles***).

The Principles will restate the 2012 Principles but add further decision-making principles (new Part 3) to be complied with in relation to persons who are:

- under 16 years old and receiving special benefit; or
- between the ages of 16 and 21 and receiving youth allowance, disability support pension or ABSTUDY at a rate calculated on the basis it is unreasonable to live at home; or
- under 25 years old and have received crisis payment within the last 13 weeks due to having been released from gaol.

Part 3 of the Principles sets out triggers that guide the Secretary to make a determination that such a person is a vulnerable welfare payment recipient, unless an exception applies. The changes in Part 3 will ensure that some of the nation's most vulnerable young people will have streamlined additional support and access to services through income management. By focussing on younger Australians the triggers will act as an early intervention tool. This is aimed at ensuring these young people are given the best possible start to their lives as an independent person by providing them with the basic budgeting and financial management skills and capabilities that will help them throughout their lives. The exceptions are where:

- the income management regime would place the person's mental, physical or emotional wellbeing at risk, including that the person is not able to meaningfully engage in or comprehend the income management process or is experiencing serious instability in their housing or living situation and income management would affect their ability to direct funds to housing; or

- the person is undertaking full-time study; or

- the person is actively involved in employment or study, is applying appropriate resources to meet their relevant priority needs and has recently been receiving their relevant social security payment at a reduced rate (for example, due to the person's earnings from employment); or

- the person is already subject to the income management regime under the voluntary income management measure (section 123UFA of the Act).

In addition, when considering a current determination made under Part 3, the Principles provide that the Secretary may revoke that determination where:

- the person no longer meets the criteria which allowed the current determination to be made and the person has requested that the determination be revoked; or

- remaining subject to the vulnerable welfare payment recipient measure of income management would place the person's mental, physical or emotional wellbeing at risk, including that the person is not able to meaningfully engage in or comprehend the income management process or is experiencing serious instability in their housing or living situation and income management would affect their ability to direct funds to housing; or

- the person is undertaking full-time study,

- the person is actively involved in employment or study, is applying appropriate resources to meet their relevant priority needs and has recently been receiving their relevant social security payment at a reduced rate (for example, due to the person's earnings from employment); or

- the person has been subject to the income management regime under the vulnerable welfare payment recipient measure because of Part 3 of these Principles for a period or periods totalling at least 12 months and:

    - the person has successfully engaged in a supportive mentoring, coaching or case management relationship that included a transition to independence and the Secretary is satisfied that the person is likely to continue doing so, or

    - the person has demonstrated the skills and ability to manage their money and to live independently and the Secretary is satisfied that the person is likely to continue doing so.

These changes do not alter the existing decision-making principles relating to persons being considered for income management because they are a vulnerable welfare payment recipient where a Centrelink social worker assesses whether the person is experiencing an indicator of vulnerability. The existing decision-making principles relating to these persons are now located in Part 2 of the Principles and are intended to operate separately to the new provisions dealing with vulnerable youth (Part 3). Some consequential changes have been made, including the addition of new definitions relevant to Part 3.

The Principles are a legislative instrument and commence on 1 July 2013.

Explanation of Provisions

Part 1 of the Principles (sections 1 to 5) deals with preliminary and technical matters.

Section 1 states the name of the Principles.

Section 2 states that the Principles commence on 1 July 2013.

Section 3 states that the 2012 Principles are revoked.

Section 4 contains definitions and interpretation provisions that are relevant to the Principles.

Subsection 4(1), among other things, includes new definitions for various social security payments relevant to persons covered by Part 3 of the Principles, as discussed below. A new definition for the term *equivalent rate of special benefit* has also been included given special benefit has no maximum basic rate in the Social Security Act. A person's maximum basic rate is utilised by Part 3 of the Principles to work out when a person's social security payment has reduced (for example, due to income from employment) such that they are no longer required to be placed on, or remain subject to, income management.

Subsections 4(2) to (6) of the Principles are interpretation provisions that provide what circumstances are an *indicator of vulnerability* (subsection 4(2)), when a person is experiencing *financial exploitation* (subsection 4(3)), *financial hardship* (subsection 4(4)), *failure to undertake reasonable self-care* (subsection 4(5)) and *homelessness or risk of homelessness* (subsection 4(6)). These interpretation provisions are used in Part 2 of the Principles and remain unchanged from the 2012 Principles.

Section 5 states the purpose of the Principles.

Part 2 of the Principles (sections 6 and 7) sets out general decision-making principles relevant to decisions to make, vary or revoke a determination that a person is a vulnerable welfare payment recipient for persons other than those covered by Part 3 of the Principles.

Section 6 provides for the application of Part 2 including that it does not apply to situations where the Secretary is considering a determination in relation to persons covered by Part 3 (subsection 6(1)) and in relation to a determination made under Part 3 (subsection 6(2)). These provisions ensure the decision-making principles in Part 2 operate independently of those in Part 3.

Section 7 sets out the decision-making principles that the Secretary must comply with in making, varying or revoking, a determination that a person is a vulnerable welfare payment recipient under Part 2. If a determination that a person is a vulnerable welfare payment recipient is made under Part 2, then subject to other conditions being met, the person will be subject to the income management regime under the vulnerable welfare payment recipient measure.

Subsection 7(1) sets out the matters that must be considered by the Secretary. Subsection 7(1) is expressed to be subject to subsections (2), (3), (4), (5) and (6).

The Secretary must consider, under paragraph 7(1)(a), whether the person is experiencing an indicator of vulnerability (as defined in subsection 4(2)), or, whether a person who is subject to the income management regime is likely to experience an indicator of vulnerability if the person does not become subject to a vulnerable welfare payment recipient determination or does not remain subject to such a determination.

The Secretary must consider, under paragraph 7(1)(b) whether the person is applying appropriate resources to meet some or all of the person's relevant priority needs, or, whether a person who is subject to the income management regime is likely not to apply appropriate resources to meet some or all of the person's relevant priority needs if the person does not become subject to a vulnerable welfare payment recipient determination or does not remain subject to such a determination.

Subparagraphs 7(1)(a)(ii) and (b)(ii) require the Secretary to consider the likelihood of a person who is already subject to the income management regime subsequently experiencing an indicator of vulnerability, and not applying appropriate resources to meet their relevant priority needs, if the person does not become subject to a vulnerable welfare payment recipient determination or does not remain subject to such a determination.

The Secretary must also consider, under paragraph 7(1)(c), whether income management under the vulnerable welfare payment recipient measure is an appropriate response to an indicator or likely indicator of vulnerability that has been identified in relation to the person.

Finally, the Secretary must consider, under paragraph 7(1)(d) whether income management under the vulnerable welfare payment recipient measure is assisting, or will assist, the person to apply appropriate resources to meet some or all of the person's relevant priority needs.

Subsection 7(2) states that in considering whether a person who is the subject of a current determination or being considered for a new vulnerable welfare payment recipient determination, is experiencing an indicator of vulnerability or is likely to experience an indicator of vulnerability, the Secretary may act on the basis of relevant documents and information in his or her possession.

Subsections 7(3) and (4) limit the circumstances in which the Secretary is required to consider all of the matters set out in subsection 7(1).

Subsection 7(5) states that for paragraphs 7(1)(c) and (d), the Secretary may be satisfied that income management under the vulnerable welfare payment recipient measure is an appropriate response and will assist the person to meet some or all of his or her relevant priority needs, despite the fact that the person is willing to enter, or has entered, into a voluntary income management agreement with the Secretary under section 123UM of the Act.

Subsection 7(6) states that for paragraphs 7(1)(c) and (d), in considering whether income management under the vulnerable welfare payment recipient measure is an appropriate response and is assisting, or will assist, the person to meet some or all of his or her relevant priority needs, the Secretary must have regard to a specified range of matters. Subsection 7(7) provides that the Secretary is not limited to having regard to only those matters mentioned in subsection 7(6).

Part 3 of the Principles (sections 8 and 9) sets out decision-making principles for making or revoking a determination that a person is a vulnerable welfare payment recipient relevant to specific kinds of persons comprising vulnerable youth and youths who have recently been released from gaol.

Section 8 sets out the decision-making principles that the Secretary must comply with in making a determination that a person is a vulnerable welfare payment recipient because they meet one of the criteria in this section relating to vulnerable youth and youths who have recently been released from gaol.

Specifically, these persons include persons:

- under 16 and receiving special benefit (paragraph 8(1)(a));

- between 16 and 21 who are receiving youth allowance, disability support pension or ABSTUDY at the unreasonable to live at home rate (paragraph 8(1)(b));

- under 25 who have, within the last 13 weeks, received crisis payment because they were released from gaol (paragraph 8(1)(c)). This does not include persons who were released from psychiatric confinement.

For these people, the Secretary must determine that the person is a vulnerable welfare payment recipient unless subsection 8(2) applies. Subsection 8(2) provides circumstances where the Secretary is not required to make a determination because of subsection 8(1). These situations include where the Secretary is satisfied that:

- being subject to the vulnerable welfare payment recipient measure of income management would place the person's mental, physical or emotional wellbeing at risk, including that the person is not able to meaningfully engage in or comprehend the income management process or is experiencing serious instability in their housing or living situation and income management would affect their ability to direct funds to housing (paragraph 8(2)(a)); or

- the person is actively involved in employment or study, is applying appropriate resources to meet their relevant priority needs and has recently been receiving their relevant social security payment at a reduced rate (paragraph 8(2)(b)). A person may be receiving a reduced rate of social security payment because, for example, they are earning an amount of money from their employment or have received earnings in a past period which will reduce their payment (for example, if a student works over a previous holiday period but is currently studying); or

- the person is already subject to the income management regime under the voluntary income management measure (section 123UFA of the Act).

Section 9 sets out decision-making principles that the Secretary must comply with in revoking a determination that a person is a vulnerable welfare payment recipient because they meet one of the criteria relating to vulnerable youth and youths who have recently been released from gaol.

Subsection 9(1) provides that when considering whether to revoke such a determination in relation to a person, the Secretary may revoke such a determination if:

- the person no longer meets the criteria in subsection 8(1) which allowed the determination to be made and the person has requested that the determination be revoked (paragraph 9(1)(a)); or

- remaining subject to the vulnerable welfare payment recipient measure of income management would place the person's mental, physical or emotional wellbeing at risk, including that the person is not able to meaningfully engage in or comprehend the income management process or is experiencing serious instability in their housing or living situation and income management would affect their ability to direct funds to housing (paragraph 9(1)(b)); or

- the person is undertaking full-time study (paragraph 9(1)(c); or

- the person is actively involved in employment or study, applying appropriate resources to meet their relevant priority needs and has recently been receiving their relevant social security payment at a reduced rate (paragraph 9(1)(d)); or

- the person has been on the vulnerable welfare payment recipient measure (relating to vulnerable youth and certain youths released from gaol) for a period or periods totalling at least 12 months and the person:

    - has successfully engaged in a supportive mentoring, coaching or case management relationship that included a transition to independence and the Secretary is satisfied that the person is likely to continue doing so (subparagraph 9(1)(e)(i)); or

    - has demonstrated the skills and ability to manage their money and to live independently and the Secretary is satisfied that the person is likely to continue doing so (subparagraph 9(1)(e)(ii)). This will involve a consideration of the person's ability to manage the expenditure of their discretionary funds.

Subsection 9(2) provides that the Secretary must only have regard to the matters in subsection 9(1) when deciding whether to revoke such a determination. This provision ensures that only those reasons listed above will be cause for a person to no longer remain subject to a determination that they are vulnerable under Part 3 of the Principles.

This is supported by the range of matters referred to in subsection 9(1) which include circumstances where it is appropriate that the person not remain subject to income management, such as where income management is harmful to the person's mental, physical or emotional wellbeing, or it is not practicable to continue to income manage the person because they are managing well on their own. These factors are in addition to the ways in which a person may cease to be subject to the income management regime under the Act.

No decision-making principles have been provided in Part 3 for the Secretary's decision to vary a determination made under subsection 8(1), as it is anticipated that such a determination will remain in force for a period of twelve months without variation. The determination may be revoked within that period if appropriate.

Consultation

Consultation on the Principles was undertaken with the Department of Education, Employment and Workplace Relations, the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education as well as the Department of Human Services as the service delivery agency.

Regulatory Impact Analysis

The Principles are 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

This Legislative Instrument is the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013*.

The Principles are 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 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, of the person and his or her dependants.

Under section 123UCA of the Act a person will be subject to the vulnerable measure of income management if they fulfil certain criteria. One of these criteria is that the Secretary (or delegate, such as a Centrelink social worker) has made a vulnerable welfare payment recipient determination about the person under subsection 123UGA(1) of the Act.

The purpose of the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013* (the ***Principles***) is to provide decision-making principles that must be complied with by Centrelink social workers when making a decision, as a delegate of the Secretary, to place a person on the vulnerable measure of income management.

Currently, under the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2012* (the ***2012 Principles***) a Centrelink social worker will make a vulnerable welfare payment recipient determination if a person is vulnerable, the person is not applying appropriate resources to address this vulnerability, and they consider income management would assist the person in addressing the vulnerability. A Centrelink social worker will also consider these factors when varying or revoking such a determination.

In such circumstances, a person will be vulnerable if they are:

- Experiencing financial exploitation,
- Experiencing financial hardship,
- Experiencing homelessness or risk of homelessness, or

- Exhibiting a failure to undertake reasonable self-care.

The Principles will revoke and replace the 2012 Principles in order to add new decision-making principles relevant to vulnerable youth and youths who have recently been released from gaol (located in Part 3 of the Principles). These decision-making principles will be considered separately to the existing decision-making principles, currently found in the 2012 Principles, which will be retained in Part 2 of the new Principles.

Under Part 3 of the new Principles, a Centrelink Social Worker will make a vulnerable welfare payment determination if a person is:

- aged under 16 years and been granted special benefit by a social worker; or
- aged between 16 and 21, and receiving youth allowance, disability support pension or ABSTUDY at the Unreasonable to Live at Home rate; or
- under the age of 25 and has received crisis payment within the last 13 weeks due to prison release.

Part 3 of the Principles will require the Secretary to make a determination that, unless an exception applies, such a person is a vulnerable welfare payment recipient. These exceptions are where:

- the income management regime would, place the person's mental, physical or emotional wellbeing at risk; or
- the person is undertaking full-time study; or
- the person is actively involved in employment or study, is applying appropriate resources to meet their relevant priority needs and has recently been receiving their relevant social security payment at a reduced rate (for example, due to the person's earnings from employment); or
- the person is already subject to the income management regime under the voluntary income management measure (section 123UFA of the Act).

The vulnerable young people placed on the vulnerable measure of income management because of Part 3 are also able to request Centrelink social workers to reconsider a person's circumstances, as long as they have not requested a reconsideration in the past 90 days. Centrelink social workers can initiate a reconsideration at any time, and must reconsider a person's circumstances if they have been on the vulnerable youth measure of income management for 12 months. During this reconsideration, a Centrelink social worker will assess whether:

- The person is no longer eligible for income management.
- Being on the vulnerable measure of income management (because of Part 3 of the Principles) will place a person's physical, mental or emotional wellbeing at risk.

- It is not practicable to income manage a person under the vulnerable measure by way of Part 3 of the Principles because of other criteria relating to, among other things, the person's involvement in employment or study as well as engagement in supportive relationships and demonstration of skills and ability to manage money and live independently where the person has been subject to the vulnerable welfare payment recipient measure of income management by way of Part 3 of the Principles for a period, or periods, totalling at least 12 months.

If any of these factors are satisfied, then the Centrelink social worker will revoke the vulnerable welfare payment recipient determination. In most cases, the person will no longer be eligible for the vulnerable youth measures of income management. These factors will only be taken into consideration when a person is placed on the vulnerable measure because of Part 3 of the Principles. This decision is reviewable through regular Centrelink review and appeal processes.

Human rights implications

<u>The right to social security</u>

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 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.

These Principles will require the delegate to identify vulnerable persons, including young people, who may have difficulty acquiring the essential items outlined in Article 9 of the ICESCR. Persons, including vulnerable young people, subject to the vulnerable measure of income management retain their right to the same rate of social security, while being provided assistance to acquire the essential items outlined in Article 9 of the ICESCR. The requirement to allocate a percentage of their social security payments to self-maintenance, via food, clothing and housing costs, is a limitation which supports the aim of this right.

<u>The right to an adequate standard of living</u>

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 ensures that money is available for priority goods such as food, clothing and housing, and provides assistance to help people to budget. The Principles guide delegates in identifying people who require vulnerable income management to achieve an adequate standard of living and stable circumstances.

<u>The right to self-determination</u>

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*'.

The Principles assist delegates in determining whether the vulnerable measure of income management is appropriate. The vulnerable measure of income management requires that 50 per cent of a person's social security 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 Principles assist the delegate in applying the vulnerable measure of income management where it would assist people with their economic development, by ensuring they fulfil their priority needs and the priority needs of their child and other dependents. Once a person's priority needs are met, they are in a better position to pursue their economic development.

<u>The limitation of Rights under the ICESCR</u>

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 Principles, in supporting the application of the vulnerable measure of income management do not unreasonably limit a person's rights to freely dispose of their resources. The purpose of these limitations is to help vulnerable people stabilise their circumstances and address issues of vulnerability, and the Principles assist in only limiting these rights where necessary and appropriate. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

Conclusion

The Principles are compatible with human rights. They will assist in the protection of human rights by ensuring that vulnerable people are appropriately identified for the vulnerable measure of income management, and ensuring income support payments are spent in the best interest of these vulnerable people. The Principles have been drafted to ensure that any limitation of freedom of expenditure and human rights 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