**EXPLANATORY STATEMENT**

**Social Security (Administration) (Excluded circumstances – Queensland Commission) Specification 2014**

**Purpose**

The purpose of the *Social Security (Administration) (Excluded circumstances – Queensland Commission) Specification 2014* (the Specification) is to specify a circumstance in which a person will not become subject to income management following a notice given by the Family Responsibilities Commission (**FRC**). The circumstance is that the notice was given in respect of a person where:

* the person’s usual place of residence is an area other than a welfare reform community area;
* the person’s usual place of residence was not on 1 July 2008 in a welfare reform community area; and
* the person has not lived for 3 months or more in a welfare reform community area since 1 July 2008.

“Welfare reform community area” is defined in the Specification to be the Aurukun area, Coen area, Hope Vale area and Mossman Gorge area.

**Background**

Subsections 123UF(1) and (2) of the *Social Security (Administration) Act 1999* (**Social Security Administration 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 Social Security Administration Act and the *Social Security (Administration) – Queensland Commission (Family Responsibilities Commission) Specification 2014* 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 Social Security Administration Act). The FRC relies on provisions in the *Family Responsibilities Commission Act 2008* (Qld) (**FRC Act**) to provide notices to the Secretary. In general terms, the FRC may give such a notice in respect of certain persons who are community members. Section 7 of the FRC Act provides that a person is a community member if the person is a welfare recipient and either:

* the person’s usual place of residence is, or was on the commencement of section 7, in a welfare reform community area; or
* the person has, at any time after the commencement of section 7, lived in a welfare community area for at least 3 months.

Section 7 of the FRC Act commenced on 1 July 2008.

“Welfare reform community area” is defined in the Dictionary of the FRC Act to mean the Aurukun area, Coen area, Hope Vale area, Mossman Gorge area or another area prescribed under regulation. The *Family Responsibilities Commission Regulation 2008* (Qld) (**FRC Regulation**) was amended on 7 August 2014 to provide that the area of Doomadgee Aboriginal Shire Council is prescribed as a welfare reform community area. No other areas have been prescribed by regulation as welfare reform community areas.

Paragraphs 123UF(1)(d) and 123UF(2)(e) of the Social Security Administration Act provide that for a person to be subject to income management under section 123UF, the notice from the FRC must not have been given in such circumstances (if any) as are specified by the Minister for the purpose of those paragraphs.

**Summary**

This Specification seeks to ensure that income management under section 123UF of the Social Security Administration Act will not apply to a person where:

* the person’s usual place of residence is in an area other than Aurukun area, Coen area, Hope Vale area or Mossman Gorge area;
* the person’s usual place of residence was not in Aurukun area, Coen area, Hope Vale area or Mossman Gorge area on 1 July 2008; and
* the person has not lived in one of those areas for 3 months or more since
1 July 2008.

This ensures that income management under the FRC model cannot be expanded in a manner that is unintended by the Australian Government.

**Explanation of the provisions**

**Section 1** sets out the name of the Specification.

**Section 2** provides that the Specification commences on the day after it is registered.

**Section 3** sets out a number of definitions used in the Specification.

“Welfare reform community area” is defined by reference to Aurukun area, Coen area, Hope Vale area and Mossman Gorge area. These are the areas that are included in the definition of “welfare reform community area” in the FRC Act. The definition of “welfare reform community area” in this Specification does not include areas taken to be welfare reform community areas under the FRC Regulation.

“Aurukun area”, “Coen area”, “Hope Vale area” and “Mossman Gorge area” are defined in section 3 in the same way as those terms are defined in the FRC Act. “Aurukun area” and “Hope Vale area” are defined by reference to the Aurukun Shire Council and Hope Vale Shire Council. It is intended that these councils would have the same meaning as they do under Queensland law.

**Section 4** specifies a circumstance for paragraphs 123UF(1)(d) and 123UF(2)(e) of the Social Security Administration Act.

Subsections 123UF(1) and (2) provide for 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 purpose of those paragraphs.

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

* the person’s whose 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 a welfare reform community area; and
* the person has not lived for 3 months or more in a welfare reform community area since 1 July 2008.

“Welfare reform community area” is defined in section 3 of this Specification to mean the areas of Aurukun, Coen, Hope Vale and Mossman Gorge.

The effect of section 4 is that a person will not become subject to income management under section 123UF of the Social Security Administration Act unless:

* the person’s usual place of residence is in Aurukun area, Coen area,
Hope Vale area or Mossman Gorge area; or
* the person’s usual place of residence was on 1 July 2008 in Aurukun area, Coen area, Hope Vale area or Mossman Gorge area; or
* the person has lived for 3 months or more in Aurukun area, Coen area, Hope Vale area or Mossman Gorge area since 1 July 2008.

1 July 2008 is the day on which the FRC commenced.

This Specification means that a person cannot become subject to income management under section 123UF of the Social Security Administration Act on the basis of living in Doomadgee Aboriginal Shire Council or any other new welfare reform community areas that Queensland provides for in the FRC Act or the FRC Regulation.

**Consultation**

Consultation was undertaken on the Specification with the Department of the Prime Minister and Cabinet and the Department of Human Services.

Broader community consultation was not necessary as the Specification is not expanding income management to new area/s or persons.

**Regulation Impact Analysis**

The Specification does not require a Regulation Impact Statement because 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) (Excluded circumstances – Queensland Commission) Specification 2014***

*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* (**Social Security Administration Act**) establishes an income management regime that applies to recipients of certain welfare payments. Subsections 123UF(1) and (2) of the *Social Security (Administration) Act 1999* 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 Social Security Administration Act and the *Social Security (Administration) – Queensland Commission (Family Responsibilities Commission) Specification 2014* 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 Social Security Administration 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 Social Security Administration Act allow for a circumstance to be specified by the Minister in which a notice must not be given by the FRC to subject a person to income management under section 123UF.

**Human Rights implications**

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognises ‘*the right of everyone to social security, including social insurance’.*  The right to social security is not engaged by this Specification as it is not enabling the roll out of income management to any new persons in any new locations. People currently being income managed in the four welfare reform community areas will not be impacted.

For the same reason, the Specification also does not engage or limit any other human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Conclusion**

This Specification does not engage or limit any human rights or freedoms as it is not rolling out income management to any new persons in any new locations. Rather, it is maintaining the current status quo of income management under the FRC model in Cape York.