



25 June 2010

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Dear Ms Edwards

Exposure Draft of the Policy Outlines for Income Management

Thank you for the opportunity to comment on the *Exposure Draft of the Policy Outlines for Income Management* (draft Policy Outlines), issued by FaHCSIA on 15 June 2010. Thank you also for granting an extension to provide feedback by 25 June 2010.

FAHCSIA has noted that the draft Policy Outlines, are proposed to be effected by legislative instruments that seek to detail the application of the new income management scheme outlined in the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Act (2010)*. The Commission understands that they will be drafted as legislative instruments, in compliance with the *Legislative Instruments Act 2003*, and are anticipated to be signed off by the Minister by early July 2010. FaHCSIA have confirmed that these will be disallowable instruments.

The Exposure Draft contains 5 Policy Outlines:

- Policy Outline 1 - Vulnerable Welfare Payment Recipient Measure (s123UGA(2))
- Policy Outline 2 - Parental Exemptions – Indicators of financial vulnerability (s123UGD(5))
- Policy Outline 3 - Parental Exemptions – Parents with children of compulsory school age and under compulsory school age (s123UGD(3) and s123UGD(2))
- Policy Outline 4 - Class Exemption – Special Benefit (s123UGB(2))
- Policy Outline 5 - Matched Savings Scheme (Income Management) Payment (s1061WG(3))

The Commission has assessed the policies from a human rights framework and comments on Policy Outlines 1-3 are provided below. The Commission makes no comment on Policy Outlines 4 and 5.

1. A human rights based approach

As the Commission has previously noted, preferred features of an income management measure that is compliant with human rights standards include:

- voluntary/ opt-in approaches - rather than automatic quarantining or an exemption approach
- a last-resort approach for targeted risk areas such as child protection (that is supported by case management and support services), akin to the Family Responsibilities Commission model in Queensland - rather than automatic quarantining and
- a defined period of income management, where the timeframe for compulsory quarantining is proportionate to the context.

Any income management scheme should also be supplemented by additional support programs that address the rights to food, education, housing, and provide support in the form of financial, literacy/budgeting skills development for welfare recipients, safe houses for women and men, and alcohol and substance abuse programs.

Furthermore, the right to social security, as recognised in the Covenant on Economic, Social and Cultural Rights requires States to administer social security benefits in a way that:

- recognises the principle of human dignity and the right to non-discrimination
- ensures that the eligibility conditions for unemployment benefits are reasonable and proportionate and
- ensures that the benefit must not be provided in a form that is onerous or undignified.¹

The draft Policy Outlines are not consistent with the elements of the human rights based approach noted above. The definition of vulnerable persons is not sufficiently targeted to be reasonable and proportionate, and the eligibility conditions for the exemptions are too onerous, for these draft Policy Outlines to be compliant with the right to social security in this regard.

The draft Policy Outlines set up processes and procedures for income management that could mean a disproportionate number of Aboriginal and Torres Strait Islander welfare payment recipients are income managed. This could be an indicator of a policy that is indirectly racially discriminatory under the *Racial Discrimination Act 1975* (Cth).

¹ This is based on information contained in General Comment 20 on implementation of ICESCR by the United Nations Committee on Economic, Social and Cultural Rights: UN Doc: E/C. 12/GC/20/CRP. 1, available online at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>, accessed 7 January 2008.

Currently 60% of income-managed clients are female.² Further, as greater numbers of women have responsibilities for the care of children, it is likely that a disproportionate number of women will be income managed.

The Policy Outlines are also very complex, which could make it difficult for Centrelink staff to apply consistently, fairly and transparently across the board.

The Commission makes recommendations below for amending the Policy Outlines, to bring them into closer compliance with human rights standards.

1 Policy Outline 1 - Vulnerable Welfare Payment Recipient Measure (s123UGA(2))

This policy provides the definition for a 'vulnerable recipient' to be welfare payment recipients within a declared area that meet the following criteria:

- Financial hardship (i.e. unable to access or engage in activities that meet their priority needs and the priority needs of their children, partner and other dependants, due to a lack of financial resources).
- Domestic and family violence
- Financial exploitation (i.e. humbugging)
- Failure to undertake reasonable self care (i.e. substance abuse, problem gambling, and/or mental health issues), or
- People who are homeless or at risk of homelessness

The intent of this category for income management was to reach people the Government considers are most in need of income management and extend no further than necessary.³ The explanatory memorandum for the Bill suggested that this category would include situations of vulnerability such as domestic violence, economic abuse and financial crisis.⁴

The Commission is of the view that the proposed definition has some significant flaws as it seeks to capture a wider range of situations of vulnerability than is necessary. Most importantly, we have serious concerns that the inclusion of family violence as an indicator of vulnerability may create more harm than good.

As explained below, the proposed definition is constructed in such a broad manner that it is possible that it will capture recipients who should be exempt from income management under the Act, namely recipients of the age pension, disability support

² Australian Institute for Health and Welfare, *The evaluation of income management in the Northern Territory* (2010), Executive Summary. At http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/nt_eval_rpt/0_summary.htm (viewed 20 January 2010).

³ Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response.

⁴ *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill Explanatory Memorandum*. At <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/r4265%22> (viewed 18 June 2010).

pension, or carer payment. Aboriginal and Torres Strait Islander peoples are likely to be a disproportionate number of the people who will be income managed.

Decision-making principles:

The decision-making principles state that the delegate must consider whether the person is not meeting their priority needs and/or the priority needs of their children and/or other dependents, now or in the foreseeable future, as a result of experiencing an indicator of vulnerability. It is submitted that the delegate should be limited to considering actual situations where priority needs are not being met, at the point in time the assessment is being made - rather than based on a Centrelink social worker's assessment of the potential of priority needs not being met at some point in the foreseeable future, as this may or may not bear out.

The Policy Outlines should be amended to provide clearer guidance on how to assess whether the indicator of vulnerability can be assisted by income management. To date the government has not demonstrated or provided evidence of which forms of vulnerability can be assisted by income management. In the absence of any proper guidance the Centrelink social worker could assume that all forms of vulnerability are assisted by income management, which would fail to meet the intent of developing a more targeted scheme. The Policy Outline should also require the Centrelink social worker to consider provision of other services or programs to address the welfare payment recipient's issues, before resorting to income management, or providing them in conjunction with income management.

The priority needs referred to should be listed within the legislative instrument, rather than remain undefined, or be defined in reference to another legislative instrument or Act.

Indicators of vulnerability:

- Financial hardship: This indicator is based upon the criteria of being unable to meet priority needs due to a lack of financial resources. Given the low level of income welfare payment recipients receive, most people living on welfare payments have limited financial resources for meeting priority needs.

Research by ACOSS indicates that unemployed people and sole parents face a much higher risk of financial hardship than most other groups in the community. For example, the research shows that 57% of Parenting Payment recipients and 28% of Newstart Allowance recipients could not afford to pay utility bills on time compared with 12% of all Australians. Over 40% of both groups could not afford dental treatment when needed. A major reason for this is the very low level of social security allowance payments for unemployed people. The base rate of Newstart Allowance for unemployed adults is just \$228 per week. This has not increased in real terms since the early 1990s. The payment for unemployed young people living independently is \$186 per week.⁵

⁵ ACOSS, *Submission to Senate Community Affairs Legislation Committee: Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and related bills* (February 2009).

- The criteria for this indicator needs to be narrowed to ensure that only welfare payment recipients who are in extreme situations of financial hardship, at the time of assessment, are income managed. To ensure this it would be of benefit for the Policy Outline to provide further clarity on what factors are to be considered by the Centrelink social worker when determining whether a welfare payment recipient is identified as experiencing financial hardship.

Welfare payment recipients who are not facing extreme financial hardship, but who feel they would benefit from income management are able to avail themselves of the income management scheme under the voluntary scheme.

- Domestic or family violence (as defined in Section 1.1.D.235 of the Guide to the Social Security Act): The Commission commends the Government for addressing domestic and family violence but believes that this indicator should be removed as it is not properly targeted and will not be effective for addressing domestic and family violence. The Commission has expressed concern that there may be several negative, unintended consequences of including domestic or family violence as a trigger for being income-managed as a vulnerable welfare payment recipient.

One important unintended consequence is that including domestic violence or family violence as a trigger for income management could discourage women from accessing support services from the police, Centrelink, or legal services. This may place women at greater risk, and result in under-reporting of domestic violence. We have grave concerns in this regard.

Also, women who are attempting to leave situations of domestic violence or family violence require discretionary cash income to pay for travel, crisis and other accommodation, and other costs and will be severely disadvantaged if they are income managed. These are serious unintended consequences as they could potentially place women in situations of significant risk.

In addition, women experiencing domestic violence or family violence may not provide information to Centrelink, and therefore will not have access to crisis entitlements and support services available from Centrelink.

A further unintended consequence of including domestic violence or family violence as an indicator is that the Policy Outline runs contrary to the policies and programs the Government is putting in place for the National Plan to Reduce Violence against Women.

Any measures to address safety and support in the area of violence need to be considered as part of the development and implementation of the National Plan to Reduce Violence against Women. We are committed to supporting the National Plan to address the issue in a way that offers protection from risk, and promotes healthy families and healthy communities. We are in the process of writing to the Minister for Families, Housing, Community Services and Indigenous Affairs, and the Minister for the Status of Women regarding the National Plan. Further discussion is needed to ensure that the policies are not contradictory.

For these reasons, domestic violence and family violence should be removed as an indicator of vulnerability.

The Commission further notes that the need for an indicator for domestic violence is not required as the financial exploitation indicator already provides for women experiencing economic abuse (a form of domestic violence) to be placed on income management.

- Financial exploitation. Financial exploitation among family and community members should be limited to situations of exploitation that are sustained over a period of time and supported by evidence, rather than using one-off, ad-hoc instances, as an indicator to trigger income management. The Commission notes that the Policy Outline should provide further clarity on what factors are to be considered by the Centrelink social worker when determining whether a welfare payment recipient is identified as experiencing financial exploitation.
- Failure to undertake reasonable self care: There is no clear evidence of income management being an effective tool for addressing addictions and mental health concerns. There is also a concern that many recipients of the Disability Support Pension, who are intended to be exempted from the new income management scheme, could be targeted by this criterion. Further, the indicator is insufficiently defined. For instance, it is not clear what level of self-care individuals are required to exhibit and how a Centrelink social worker is to assess this. This indicator needs to be removed or defined more clearly to identify specific persons who could benefit from income management.
- People who are homeless or at risk of homelessness: Income management has not been trialled on homeless people, and there is no evidence that it is an effective tool for supporting homeless people. It could have the negative unintended consequence of preventing homeless people from accessing assistance from Centrelink and other support services for fear of being income managed. Such negative consequences are again inconsistent with the policies and programs the government is implementing under the National Homelessness Strategy.

The indicator of vulnerability should be narrowed to people in situations of homelessness at the time of assessment, and remove consideration of people who might be at risk of becoming homeless at some unknown point in the future.

People who are homeless or at risk of homelessness should be removed as an indicator of vulnerability.

Processes and procedures:

The Commission notes that the provision for making an assessment based on file notes creates a risk that the circumstances of welfare payment recipients will be incorrectly, given the complexity of issues that are to be considered in making the decision.

The requirements of both the initial assessment and the annual review are demanding on welfare payment recipients, and particularly on Aboriginal and Torres Strait Islander peoples living in situations of disadvantage. There is a need for the government to:

- ensure there is appropriate and adequate information available to welfare payment recipients on accessing exemptions and
 - provide additional resources for welfare rights workers to assist welfare payment recipients through their assessments, reviews and any appeal processes that may arise.
- **Policy Outline 2 - Parental Exemptions – Indicators of financial vulnerability (s123UGD(5))**

The intent of the exemptions was to provide a simple streamlined process for people who are demonstrating responsible parenting to seek exemptions from income management.

The exemption applies to parents in the following new categories of person subject to income management:

- income support payment recipients aged under 25 years, in receipt of relevant payment for at least 13 weeks of the last 26 weeks (Disengaged Youth);
- income support payment recipients aged over 25 years, in receipt of relevant payment for more than 52 weeks of the last 104 weeks (Long-term Welfare Payment Recipients).

The two part test proposed in the legislative instrument is:

Part one of the exemption process requires a person with children of compulsory school age (that is, as stipulated by applicable state or territory law) or younger, to demonstrate that there have been no indications of financial vulnerability during the twelve-month period ending immediately before the test time. This is stipulated in the proposed legislation.

Part two of the exemption process requires a person with children of compulsory school age or younger to demonstrate that they are undertaking responsible parenting, by meeting attendance or participation requirements relating to education, health care and/or other activities.

Claims for exemptions are to be assessed by Centrelink Customer Service Advisors (CSA). This is concerning as the first part of the test requires an assessment of financial vulnerability. In Policy Outline 1, a similar assessment is to be done by a Centrelink social worker. It is not clear that Centrelink CSAs will have the capacities to make such assessments, and it maybe more effective to have Centrelink social workers responsible for assessing claims for exemptions as well.

The test for financial vulnerability under this policy outline is such that many people would be deemed to be facing financial hardship as a result of have limited financial resources for meeting priority needs. The test needs to be narrowed for welfare

payment recipients who are in extreme situations of financial hardship, at the time of assessment.

The policy requires that in order to qualify for an exemption, a parent must satisfy the Centrelink CSA that they have had no indications of financial vulnerability over the preceding 12 month period. It is submitted that the stipulated 12 months period for the assessment should be removed and the focus should be on considering the financial status of the welfare recipient at the time of the assessment. For instance, some people may have faced hardships 9 months ago, but have since put in place measures and improved their situation. They should not be denied an exemption on the basis of past financial hardships that they have since rectified.

The indicators used to assess financial vulnerability require the welfare recipient to provide a substantial amount of documentation and evidence of their financial status. Such onerous requirements could amount to a barrier that would prevent many welfare payment recipients, particularly Aboriginal and Torres Strait Islander welfare payment recipients, from accessing an exemption.

The Commission has previously noted that due to the lower education levels, the difficulties of living in rural and remote areas and living in disadvantaged situations, Aboriginal welfare payment recipients subject to these categories of income management may face difficulties in accessing the exemption processes.⁶

It will be important for the Government to put in place proper monitoring and evaluating processes to assess where welfare payment recipients have not accessed the option for an exemption whether it was their choice to remain on income management, or was it because the process outlined in the Policy Outline is too difficult to comply with. This will be particularly important when monitoring the number of Aboriginal and Torres Strait Islander welfare payment recipients who are able to access an exemption.

2 Policy Outline 3 - Parental Exemptions – Parents with children of compulsory school age and under compulsory school age (s123UGD(3) and s123UGD(2))

This policy addresses part two of the exemption process which requires a person with children of compulsory school age or younger to demonstrate that they are undertaking responsible parenting, by meeting attendance or participation requirements relating to education, health care and/or other activities.

Health requirements:

The requirements for evidence of immunisation and health checks may be difficult for many Aboriginal and Torres Strait Islander families, particularly in remote communities, to obtain. This can include difficulties and time delays in accessing

⁶ Australian Human Rights Commission, *Submission to the Senate Community Affairs Committee Inquiry into the Welfare Reform and Reinstatement of Racial Discrimination Act Bill 2009 and other Bills* (2010), para 97.

Medicare records and accessing retrospective certificates from health care centres for checks already completed. Some accommodation should be made for such difficulties in the assessment process for an exemption.

Engagement requirements:

The principles for determining responsible parenting are limited to evidence of school attendance (or home schooling) for school aged children, and participation in identified activities, for children under the school age. The proposed legislative amendment prohibits parents from having the evidence of school attendance provided by the School to Centrelink challenged by the parents.

The only two reasons accepted under the policy for non-school attendance are sustained participation in alternative activities to regular schooling (i.e. youth at risk activities, activities set out in a foster care plan or a case management plan - sustained participation, where possible, should align with the requirement to have no more than 5 unauthorised absences in the previous 2 school terms) or severe illness or disability prevents a child from attending school.

No provision is made for other reasons why children may not attend school, such as limited access during the rainy season and attending funerals and other cultural events. Research has shown that some Aboriginal and Torres Strait Islander children may attend alternative schools due to parenting arrangements or family requirements.⁷ Some of the other reasons Aboriginal and Torres Strait Islander children may not attend school is because they are being bullied at school and the school has made no provision for their safety; or in remote areas there is no accessible, affordable school to attend; or the Education Department has not have provided a teacher in attendance.⁸ Such reasons for non-attendance are currently not accommodated for in the Policy Outline.

The Policy Outline notes the requirements cannot be fulfilled where the services are not available, but does not take into account that in many areas, especially rural and remote areas, services such as childcare, kinder gym, playgroup or preschool, may also not be affordable,⁹ accessible or culturally appropriate. This is particularly a concern for Aboriginal and Torres Strait Islander communities living in rural and remote areas.

It is also concerning that the exemptions are to be re-evaluated every 12 months, requiring parents to participate in the difficult process of demonstrating they meet the criteria on an annual basis.

⁷ S Prout & M Yap, *Indigenous temporary mobilities and service delivery in regional service centres: A West Kimberley case study*, CAEPR Working Paper 66 (2010). At <http://www.anu.edu.au/caepr/Publications/WP/2010WP66.php> (viewed 18 June 2010).

⁸ Australian Human Rights Commission, *Social Justice Report 2008* (2008), ch 3.

⁹ The Commission notes the findings and recommendations of the Senate Standing Committee on Education, Employment and Workplace Relations' *Report on the provision of child care in Australia* (2009) which identifies the lack of affordable child care in Australia as a concern that needs to be addressed. (At http://www.aph.gov.au/Senate/committee/eet_ctte/child_care/report/index.htm, viewed 18 June 2010).

The onerous requirements being imposed by the draft Policy Outlines for obtaining an exemption could mean the exemptions are not practically available for many welfare payment recipients, particularly Aboriginal and Torres Strait Islander welfare payment recipients.

There is again a need for the government to provide additional resources for welfare rights workers to assist welfare payment recipients through their assessments, reviews and any appeal processes that may arise.

The draft Policy Outline should be amended to ensure exemptions are not denied as a result of parents not having access to accessible, affordable, available and culturally appropriate services.

Recommendations

It is recommended that the draft Policy Outlines be amended as follows:

- restrict consideration to existing situations of vulnerabilities at the time of the assessment (rather than past or potential future vulnerabilities)
- remove family violence, domestic violence, homelessness and risk of homelessness as indicators of vulnerability
- restrict financial hardship to extreme financial hardship
- narrow the requirement in part 1 of the exemption test to only identifying welfare payment recipients who are in extreme situations of financial crisis at the time of applying for an exemption.
- ensure exemptions are not denied as a result of parents not having access to accessible, affordable, available and culturally appropriate services.

In addition the Government should:

- ensure there is appropriate and adequate information available to welfare payment recipients on accessing exemptions and
- provide additional resources for welfare rights workers to assist welfare payment recipients through their assessments, exemption applications, reviews and any appeal processes that may arise.
- Ensure any monitoring and evaluation of the income management scheme also assesses the cost effectiveness of the scheme, which is currently budgeted at \$405 million over five years, to income manage welfare payments for an estimated 20,000 people.

Should you require any further information please contact Alison Aggarwal, Senior Policy Officer, Social Justice Unit (alison.aggarwal@humanrights.gov.au; ph: 02 9284 9642).

Yours sincerely

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