

## 13. Income Management—Social Security Law

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### Summary

13.1 'Income management' is an arrangement under the *Social Security (Administration) Act 1999* (Cth) by which a proportion of a person's social security and family payments is quarantined to be spent only on particular goods and services, such as food, housing, clothing, education and health care.

13.2 This chapter discusses the relevance of family violence to income management measures and the treatment of family violence in the income management of welfare payments under the *Social Security (Administration) Act*. The chapter briefly explains the nature and the history of income management regime and how income management may be improved to work to protect the safety of people experiencing family violence. By way of comparison, the income management model in the *Family Responsibilities Commission Act 2008* (Qld) is discussed.

13.3 In particular, this chapter examines the implications of family violence for how individuals may become subject to, or obtain exemptions from, the application of the income management regime; and the consequences of income management for people experiencing family violence.

13.4 The ALRC concludes that the complexity of family violence and the intertwining of family violence in a number of the ‘vulnerability indicators’ that trigger the imposition of compulsory income management leads to serious questions about whether it is an appropriate response. The ALRC proposes that there should be a flexible and voluntary form of income management offered to people experiencing family violence to ensure that the complex needs of victims are provided for and their safety protected.

13.5 The ALRC also proposes a review of the voluntary income management measures and streams to provide welfare recipients experiencing family violence with a flexible opt-in and opt-out measure.

## Background

### Introduction of income management

13.6 Income management was first introduced in 2007 as part of the Northern Territory Emergency Response (NTER) to allegations of child abuse in specific Indigenous communities. Under the *Social Security and Other Legislation (Welfare Payment Reform) Act 2007* (Cth), the NTER imposed income management upon peoples receiving income support or family assistance payments in 73 prescribed communities.<sup>1</sup>

13.7 The Australian Government implemented the income management legislation as a ‘special measure’ for the purposes of the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>2</sup> and the *Racial Discrimination Act 1975* (Cth) (RDA).<sup>3</sup> In 2010, the income management regime was amended,<sup>4</sup> following legal challenges to the NTER legislation on the basis of racial discrimination against Indigenous peoples.<sup>5</sup>

1 *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

2 *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, [1975] ATS 40 (entered into force on 04 January 1969) arts 1(4) and 2(2).

3 *Racial Discrimination Act 1975* (Cth) s 8.

4 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Act 2010* (Cth).

5 For example, in the High Court case of *Wurridjal v Commonwealth* (2009) 237 CLR 309 Kirby J observed that the *Northern Territory Emergency Response Act 2007* (Cth) ‘expressly removes itself from the protections in the *Racial Discrimination Act 1975* (Cth) and hence, from the requirement that Australia, in its domestic law, adhere to the universal standards expressed in the *International Convention on the Elimination of All Forms of Racial Discrimination*, to which Australia is a party’: [213]. See Department of Parliamentary Services, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill* (2009) <<http://aph.gov.au/Library/pubs/bd/2009-1-/10bd094.pdf>> at 28 April 2011, which included changes to the *Social Security Act 1991* (Cth), *A New Tax System (Family Assistance) Act 1999* (Cth) and *Veterans’ Entitlements Act 1986* (Cth).

13.8 The Australian Government announced in the 2011–2012 Budget that income management will, from July 2012, apply to all Australians in a non-discriminatory manner and no longer be a part of the Northern Territory Response policy.<sup>6</sup> As the NTER is set to expire in August 2012, the government will further amend income management laws to continue a new phase of the intervention.<sup>7</sup>

### The New Income Management Model

13.9 On 1 July 2010, the Government introduced a new welfare reform phase as the New Income Management model (New IM).<sup>8</sup> The New IM measure applies to persons who meet the income management criteria, irrespective of race or ethnicity.<sup>9</sup> The New IM has four areas: the Participation/Parenting, the Child Protection, Vulnerable and Voluntary streams.<sup>10</sup>

13.10 The New IM commenced on 1 August 2009 and currently operates in urban and rural areas such as the Barkly region, Alice Springs, Katherine, East Arnhem, Darwin, Palmerston and other outback locations of the Northern Territory.<sup>11</sup> In March 2011, the estimates for Indigenous and non-Indigenous persons on New IM within the Northern Territory were 15,464 and 1,165 persons respectively.<sup>12</sup>

13.11 From 1 July 2012, income management will operate in other parts of Australia that include: Bankstown (NSW), Logan (Qld), Rockhampton (Qld), Playford (SA), and Greater Shepparton (Vic).<sup>13</sup> This is described as place-based income management.

13.12 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) has the primary responsibility for the income management system, which is administered by Centrelink. The Department of Human Services (DHS) provides a central policy and coordination role for the government's delivery of services, which now includes Centrelink under its Human Services Portfolio.<sup>14</sup> The national strategy of service delivery for Compulsory and Voluntary Income Management is undertaken by DHS.

6 Australian Government, *Stronger Futures in the Northern Territory* (2011), [5].

7 M Franklin and M Rout, 'No Retreat on Northern Territory Intervention', *The Australian*, 22 June 2011, <<http://www.theaustralian.com.au/national-affairs/no-retreat-by-julia-gillard-on-northern-territory-intervention/>>. See also Australian Government, *Stronger Futures in the Northern Territory* (2011).

8 See Department of Families, Housing, Community Services and Indigenous Affairs, *The New Model of Income Management* (2010) <<http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/p2.aspx>> at 24 June 2011. NIM was introduced on 1 July 2010 and applied to people irrespective of race or ethnicity.

9 Department of Families, Housing, Community Services and Indigenous Affairs, *Evaluation Framework for New Income Management* (2010) <<http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/p2.aspx>> at 27 June 2011, [2].

10 Department of Families, Housing, Community Services and Indigenous Affairs, *The New Model of Income Management* (2010) <<http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/p2.aspx>> at 24 June 2011.

11 Department of Families, Housing, Community Services and Indigenous Affairs, *Evaluation Framework for New Income Management* (2010) <<http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/p2.aspx>> at 27 June 2011.

12 Department of Families, Housing, Community Services and Indigenous Affairs, *Centrelink Administrative Data*, 7 April 2011.

13 Department of Families, Housing, Community Services and Indigenous Affairs, *Income Management* (2011) <[http://www.fahcsia.gov.au/sa/indigenous/proserv/ntresponse/about\\_res](http://www.fahcsia.gov.au/sa/indigenous/proserv/ntresponse/about_res)> at 24 June 2011.

14 T Plibersek, *The Human Services Portfolio* <[http://www.mhs.gov.au/the\\_human\\_services\\_portfolio.php](http://www.mhs.gov.au/the_human_services_portfolio.php)> at 22 July 2011.

## Operation of income management

13.13 Under income management, a percentage of a person's welfare payments is set aside for their 'priority needs' and that of their children; namely, for services such as food, rent and utilities.<sup>15</sup> Income management does not affect or otherwise reduce the total amount of welfare payments payable to a recipient. Rather, it changes the way in which a person receives their payment. This is achieved by requiring persons to buy goods with a BasicsCard at approved stores, or through direct payment arrangements with landlords or utility providers.<sup>16</sup>

13.14 Income managed funds cannot be used to purchase excluded goods, such as alcohol, tobacco products, pornographic material and gambling goods and activities.<sup>17</sup>

## Objects

13.15 The objects of income management, as set out in the *Social Security (Administration) Act* are:

- (a) to reduce immediate hardship and deprivation by ensuring that the whole or part of certain welfare payments is directed to meeting the priority needs of:
  - (i) the recipient of the welfare payment; and
  - (ii) the recipient's children (if any); and
  - (iii) the recipient's partner (if any); and
  - (iv) any other dependants of the recipient;
- (b) to ensure that recipients of certain welfare payments are given support in budgeting to meet priority needs;
- (c) to reduce the amount of certain welfare payments available to be spent on alcoholic beverages, gambling, tobacco products and pornographic material;
- (d) to reduce the likelihood that recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments;
- (e) to encourage socially responsible behaviour, including in relation to the care and education of children;
- (f) to improve the level of protection afforded to welfare recipients and their families.<sup>18</sup>

## Who is subject to income management?

13.16 Under New IM, a person may be income managed under either the compulsory or voluntary measure. Both measures apply for various welfare payment categories.<sup>19</sup> To be subjected to compulsory income management, a person must fall within one of three streams identified below.

15 See Social Policy Research Centre, *Evaluation Framework for New Income Management* (2010), 7.

16 See eg Department of Families, Housing, Community Services and Indigenous Affairs, 'Voluntary Income Management (VIM)' <[http://www.fahcsia.gov.au/sa/families/pubs/income\\_factsheet/Documents/factsheet\\_8.pdf](http://www.fahcsia.gov.au/sa/families/pubs/income_factsheet/Documents/factsheet_8.pdf)> at 12 August 2011.

17 Social Policy Research Centre, *Evaluation Framework for New Income Management* (2010), 7.

18 *Social Security (Administration) Act 1999* (Cth) s 123TB.

19 Information on the welfare payments that are covered by income management are found in the legislation and on the home pages of relevant government agencies and the Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011.

13.17 First, a person is subject to compulsory income management under the participation/parenting (mainstream) stream if the person:

- meets the criteria relating to the Disengaged Youth Payment Recipient; or
- meets the criteria relating to the Long-term Welfare Payment Recipient.

13.18 In the case of Vulnerable Welfare Payment, Disengaged Youth and Long-term Welfare Payment Recipients, a person is subject to compulsory income management if the person's place of usual residence is, at the test time, within a 'declared income management area'.<sup>20</sup>

13.19 Secondly, a person is subject to compulsory income management under the child protection stream if a child protection officer of a state or territory refers the person to be subject to the income management regime.

13.20 Thirdly, a person is subject to compulsory income management under the vulnerable stream if:

- the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (the Secretary) has determined that the person is a vulnerable welfare payment recipient;
- the person, or the person's partner, has a child who does not meet school enrolment requirements;
- the person, or the person's partner, has a child who has unsatisfactory school attendance; or
- the Queensland Commission requires the person to be subject to the income management regime.<sup>21</sup>

### Compulsory income management

13.21 Under 'Compulsory income management' (Compulsory IM), an individual's income support and family assistance payments are income managed at 50% (for participation/parenting, vulnerable and voluntary schemes), or 70% (for the Child Protection Scheme).<sup>22</sup>

13.22 One way a person is subjected to Compulsory IM is if the person is a vulnerable welfare payment recipient,<sup>23</sup> and there is a determination under the *Social Security (Administration) Act* by the Secretary (or a delegated Centrelink staff) to that effect.<sup>24</sup>

20 *Social Security (Administration) Act 1999* (Cth) s 123UCA. See also s 123TFA which defines 'declared income management area' to be a specified area, state or territory, determined by the Minister by legislative instrument.

21 *Ibid* s 123TC defines 'Queensland Commission', referring to the Family Responsibilities Commission established under the *Family Responsibilities Commission Act 2008* (Qld), as part of the Cape York Welfare Reform model—discussed below.

22 See eg Orima Research, *Evaluation of the Child Protection Scheme of Income Management and Voluntary Income Management Measures in Western Australia* (2010), prepared for the Department of Families, Housing, Community Services and Indigenous Affairs, 24.

23 *Social Security (Administration) Act 1999* (Cth) s 123UCA.

24 *Ibid* s 123UGA.

In determining whether a person is a vulnerable welfare payment recipient, the Secretary must comply with certain decision-making principles set out in the Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010 that require, among other things, an express consideration as to whether the person is ‘experiencing an indicator of vulnerability’.<sup>25</sup>

### **Indicators of vulnerability**

13.23 The *Guide to Social Security Law* and the Principles provide the following examples of indicators of vulnerability:

- financial hardship;
- financial exploitation;
- failure to undertake reasonable self-care; or
- homelessness or risk of homelessness.<sup>26</sup>

13.24 When placing an individual on Compulsory IM based upon the indicators of vulnerability and ‘the circumstances of the person’, Centrelink staff must consider whether:

- the person is experiencing an indicator of vulnerability;
- whether the person is applying appropriate resources to meet some or all of their priority needs;
- if the person is experiencing an indicator of vulnerability—income management is an appropriate response to that indicator of vulnerability;<sup>27</sup> and
- whether income management will assist the person to meet some or all of the person’s priority needs.<sup>28</sup>

13.25 Reforms that require the compulsory quarantining of a person’s welfare payment have been, and continue to be, the most controversial welfare reform in income management.

### **Voluntary income management**

13.26 Under the *Social Security (Administration) Act*, a person may enter into a written agreement with the Secretary agreeing to be subject to the income management

<sup>25</sup> Ibid pt 2, cl 5.

<sup>26</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011, [11.4.2.20] (Indicators of Vulnerability).

<sup>27</sup> *Social Security (Administration) Act 1999* (Cth) s 123UCA.

<sup>28</sup> See Department of Families, Housing, Community Services and Indigenous Affairs, *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles* (2010) and the Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011 [11.4.2.10].

regime throughout the period in force (which must be at least 13 weeks).<sup>29</sup> The agreement remains in force until it is terminated, or the period in force expires.<sup>30</sup>

13.27 Under voluntary income management (Voluntary IM), all lump sum and advance payments are income managed at 100%, while other regular payments are income managed at 50%.<sup>31</sup>

### Exemptions

13.28 Exemptions from income management can be sought by people under various measures, where the person is:

- in a specified class;<sup>32</sup>
- without dependent children;<sup>33</sup>
- with dependent children;<sup>34</sup>
- a full-time student;<sup>35</sup> or
- a school age child.<sup>36</sup>

13.29 The availability of these exemptions is subject to meeting a range of conditions in the *Social Security (Administration) Act*.<sup>37</sup> The Minister has discretion, under s 123UGB, to specify a class of welfare payment recipients as exempt from income management.

13.30 A person on income management may qualify for an exemption under s 123UGD of the *Social Security (Administration) Act*, if the person has school-aged children who are enrolled and attending, or participating in other prescribed activities, and the Secretary of FaHCSIA is ‘satisfied that there were no indications of financial vulnerability in relation to the person during the 12-month period ending immediately before the test time’.

13.31 The *Guide to Social Security Law* sets out some ‘core principles’ that should be applied in cases where a person seeks an exemption from income management. These principles, in part, state that:

- It is intended that income management promote personal responsibility and positive social behaviour by providing pathways to evidence based exemptions for people who have a demonstrated record of responsible parenting, or participation in employment or study.

29 *Social Security (Administration) Act 1999* (Cth) s 123UM.

30 *Ibid* s 123UN(1)(b) (duration); s 123UO (termination).

31 Factsheet: VIM. ‘Voluntary Income Management (VIM)’, <[http://www.fahcsia.gov.au/sa/families/pubs/income\\_factsheet/Documents/factsheet\\_8.pdf](http://www.fahcsia.gov.au/sa/families/pubs/income_factsheet/Documents/factsheet_8.pdf)>

32 *Social Security (Administration) Act 1999* (Cth) s 123UGB.

33 *Ibid* s 123 UGC.

34 *Ibid* s 123 UGD.

35 *Ibid* s 123 UGF.

36 *Ibid* s 123 UGG.

37 *Social Security (Administration) Act 1999* (Cth) s 123UGB, under pt 3B, div 2, subdiv BB.

- Exemptions are available in cases where income management is not necessary because a person has met the broad outcomes that comprise the objectives of income management. That is, the person can demonstrate that they:
  - are not experiencing hardship or deprivation and are applying appropriate resources to meet their families' priority needs,
  - can budget to meet priority needs,
  - are not vulnerable to financial exploitation or abuse, and
  - are demonstrating socially responsible behaviour, particularly in the care and education of dependent children, or
  - that they are meeting workforce participation requirements for those who are not a principal carer of a child.<sup>38</sup>

13.32 As of March 2009, Centrelink data indicated that 649 clients had applied for and been granted an exemption from income management, which represented 9.8% of managed clients. Three in five exemptions (58%) were due to clients permanently moving away from their community.<sup>39</sup>

#### **Exemption review process**

13.33 Where an exemption is refused by Centrelink, the welfare recipient has various ways to request a review of the decision. A person can request an internal review of the decision made by the Centrelink officer, which is conducted by a Centrelink Authorised Review Officer (ARO).<sup>40</sup> If the ARO decides not to exempt the person from income management, a person can seek review before the Social Security Appeal Tribunal.<sup>41</sup>

13.34 The Commonwealth Ombudsman, in a review of rights for income managed people in the Northern Territory, recommended that Centrelink develop criteria against which to review and prioritise a decision for people experiencing 'vulnerability'.<sup>42</sup> The Ombudsman highlighted the complexity involved for a welfare recipient to have a refused exemption reviewed by Centrelink, and to appeal, before the Social Security Appeals Tribunal.<sup>43</sup>

38 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011, 2 February 2011, [11.1.14.10] (Overview of Exemptions from Income Management).

39 Australian Institute of Health and Welfare, *Report on the Evaluation of Income Management in the Northern Territory* (2009), 25. That is, outside the relevant 'declared income management area' under *Social Security (Administration) Act 1999* (Cth) s 123TFA.

40 Commonwealth Ombudsman, *The Right of Review: Having Choices, Making Choices* (2011) <[www.ombudsman.gov.au/files/centrelink\\_the\\_right\\_of\\_review\\_having\\_choices\\_making\\_choices.pdf](http://www.ombudsman.gov.au/files/centrelink_the_right_of_review_having_choices_making_choices.pdf)> at 23 March 2011.

41 Social security decisions made by a delegate of the Minister for FaHCSIA are subject to external review by the SSAT. Under the NTER, amendments were made to the Act which provided that the SSAT could not review a decision made under pt 3B to apply income management to a person, or to exempt them from income management. However, amending legislation in 2009 provided the right to seek external review from the SSAT: *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009* (Cth) sch 2.

42 Commonwealth Ombudsman, *The Right of Review: Having Choices, Making Choices* (2011) <[www.ombudsman.gov.au/files/centrelink\\_the\\_right\\_of\\_review\\_having\\_choices\\_making\\_choices.pdf](http://www.ombudsman.gov.au/files/centrelink_the_right_of_review_having_choices_making_choices.pdf)> at 23 March 2011. The criteria include factors as to the complexity of the case, consequences of the decision and consent, whether it is informed or where consent was not given by Centrelink staff.

43 Commonwealth Ombudsman, *Review of Rights for Income Managed People in the Northern Territory* (2010).



### Issues related to family violence

13.35 The ALRC has identified three broad issues that arise in relation to the ways in which income management affects victims of family violence:

- the appropriateness of compulsory income management to victims of family violence;
- applying voluntary income management to victims of family violence; and
- practical issues that victims of family violence face in accessing necessary funds.

### Compulsory income management and family violence

13.36 This section considers the appropriateness of compulsory income management as a means to improve the safety of victims of family violence. It does so by examining how the assessment of ‘indicators of vulnerability’ may affect victims of family violence. It also considers how this assessment may affect a victim’s willingness to disclose family violence, and the criteria for exemption from income management.

### Indicators of vulnerability

13.37 There is no express reference to family violence as an indicator of vulnerability in the *Guide to Social Security Law* or the *Social Security (Administration) Act*. However, the *Guide to Social Security Law* recognises a number of links between indicators of vulnerability and family violence. For example, ‘financial exploitation’ may occur when ‘a person is subject to undue pressure, harassment, violence, abuse, deception or exploitation for resources by another person or people, including other family and community members’.<sup>44</sup> Similarly, homelessness may be a flawed indicator of vulnerability for people experiencing family violence, because the lack of adequate community housing creates few options for permanent accommodation.<sup>45</sup>

13.38 Therefore, while the determination to impose Compulsory IM may be triggered by the particular indicators set out in the *Guide to Social Security Law*, family violence may be the overall context and cause of particular indicators assessed under the indicators of vulnerability, either individually or together.

13.39 The decision-making principles in the *Guide to Social Security Law* do not identify why, or how, income management may assist a person who is experiencing family violence. The *Guide to Social Security Law* sets out the principles ‘for determining that there were no indications of financial vulnerability’ during the previous 12 months:

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44 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011, [11.4.2.20] (Indicators of Vulnerability). The Guide also recognises that family violence may lead to homelessness, in circumstances where the victim is forced to leave his or her home.

45 Department of Families, Housing, Community Services and Indigenous Affairs, *Indigenous Homelessness Within Australia* (2011) <[http://www.fahcsia.gov.au/SA/INDIGENOUS/PUBS/HOUSING/INDIGENOUS\\_HO...](http://www.fahcsia.gov.au/SA/INDIGENOUS/PUBS/HOUSING/INDIGENOUS_HO...)> at 2 February 2011.

- a person has been applying appropriate resources to meet priority needs,
- a person had control over their money and was not subject to financial exploitation,
- a person had stable payment patterns and budgeting practices and is meeting priority needs from their income support and family assistance payments,
- a person did not regularly require urgent funds to pay for foreseeable costs, or did not frequently change their income support pay dates and consideration is given to the reason for seeking the urgent payment.<sup>46</sup>

13.40 The Australian Domestic and Family Violence Clearinghouse (ADFVC) in the report, *Seeking Security*, argued that compulsory income management may remove people who experience family violence from the decision-making process, leaving them disempowered.<sup>47</sup>

One reason given for compulsory income management is to ensure that payments are spent on basic needs like food, rather than on undesirable expenses such as alcohol, drugs and gambling. However, this study found limited evidence from the literature that women who are affected by domestic violence generally have less capacity than other people to manage their own affairs.<sup>48</sup>

13.41 The Australian Human Rights Commission has stated that applying family violence as a trigger for the imposition of income management may have unintended consequences because people experiencing family violence and on low income welfare payments often require support services, not ‘merely’ financial management.<sup>49</sup>

### Disclosure of family violence

13.42 The prospect of the imposition of income management may lead to non-disclosure of family violence, which may be bound up in the vulnerability indicators that trigger it. Victims of family violence may prefer not to disclose family violence due to fear that income management will be imposed. They may choose to stay in an abusive relationship rather than leaving and, for example, claiming Crisis Payment.<sup>50</sup> Imposing income management on people experiencing family violence, who are capable of looking after themselves and their families, may reduce their ability to take steps to seek protection and safety.

13.43 As identified in the report, *No Way to Live*, by Dr Lesley Laing, victims and children experiencing family violence and post-separation from violence may have their decision making affected by the trauma—what the report termed ‘trauma

46 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011 [11.1.14.30] (Parental Exemptions from Income Management—Financial Vulnerability Test).

47 R Braaf and I Meyering, *Seeking Security: Promoting Women’s Economic Wellbeing Following Domestic Violence* (2011), 11.

48 *Ibid*, 100.

49 Australian Human Rights Commission, *Comment to FaHCSIA’s Exposure Draft of the Policy Outlines for Income Management* (2010), 5. The Australian Human Rights Commission also stated that ‘homelessness’ or ‘the risk of homelessness’ should be removed as an indicator of vulnerability.

50 National Welfare Rights Network, *Analysis of the Exposure Drafts of Income Management Policy Outlines, 22 June 2010* (2010), 4.

informed decision making'.<sup>51</sup> This may affect the victims' understanding of the consequences of sharing personal information.

## Submissions and consultations

### *Indicators of vulnerability and family violence*

13.44 In *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011) (Social Security Issues Paper), the ALRC asked whether family violence should be included as an indicator of vulnerability for the purposes of administering the Vulnerable Welfare Payment under the income management provisions and, if so, what definition of family violence should apply.<sup>52</sup> The ALRC also asked what additional decision-making principles or guidelines would be desirable—in particular, taking into account that a person may be a victim or a person using family violence, or both.<sup>53</sup>

13.45 Most stakeholders opposed adding to the definition of vulnerability by including 'family violence' as an indicator, and argued instead that the indicators of vulnerability should be removed altogether.<sup>54</sup> Stakeholders emphasised their concern that 'vulnerability indicators' may result in a person experiencing family violence being 'triggered' into income management and, as a consequence, compounding the problem through quarantined payments where the person wants to flee family violence.<sup>55</sup>

13.46 The North Australian Aboriginal Justice Agency (NAAJA) submitted that, although the specific words 'domestic or family violence' are not included in the indicators of vulnerability in policy or legislative instruments, the 'vulnerable indicators' described in social security policy and legislation would trigger Compulsory IM for people experiencing family violence.<sup>56</sup>

13.47 The ADFVC stated that screening for domestic and family violence is not a simple process;<sup>57</sup> and a welfare recipient attempting to demonstrate that there are no 'indications of financial vulnerability' faces a high threshold of proof.

51 L Laing, *'No Way to Live': Women's Experiences of Negotiating the Family Law System in the Context of Domestic Violence: Interim Report* (2009), 91.

52 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011).

53 Ibid, Questions 38, 39.

54 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011; North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011; ADFVC, *Submission CFV 71*, 11 May 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011; Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011; WEAVE, *Submission CFV 58*, 27 April 2011; Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

55 Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011.

56 North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011. NAAJA identified that the organisation had argued against the inclusion of the words 'family violence' in the indicators of vulnerability as it broadened the reach to vulnerable people. NAJAA Aboriginal legal services to the top end of the Northern Territory and operates offices in Darwin, Katherine and Nhulunbuy, with a dedicated Welfare Rights Outreach Program, including income management advice.

57 ADFVC, *Submission CFV 71*, 11 May 2011.

13.48 Some stakeholders noted that indicators may reflect broader social conditions, rather than particular attributes of the individual. With respect to ‘financial hardship’, the Council of Single Mothers and their Children (Vic) pointed out that many people receiving income support payments will fall into the category of experiencing financial hardship due to the combination of the low rates of welfare payments and the high cost of living.<sup>58</sup>

13.49 The ADFVC found that people experiencing domestic and family violence have a higher level of need in numerous situations, for example, when people separate and require other accommodation, relocation costs, travel, caring for children or dependants, to attend medical appointments and health reasons.<sup>59</sup> Current payment levels do not reflect the cost of living where victims of family violence incur additional costs and support services.<sup>60</sup>

13.50 While economic abuse may be a particular manifestation of family violence, the Central Australian Aboriginal Legal Aid Service (CAALAS) commented that it cannot be assumed that a person suffering domestic and family violence is also suffering economic abuse, nor should it be assumed that because of domestic violence, a person is unable to manage their financial affairs.<sup>61</sup>

#### ***Disclosure of family violence***

13.51 Several stakeholders submitted that people experiencing family violence are likely to be more reluctant to disclose their circumstances where such disclosure may lead to Compulsory IM, which may result in the victim missing out on appropriate services and support.<sup>62</sup> In particular, the disclosure of family violence was highlighted by stakeholders as a serious concern for people experiencing family violence who are afraid that disclosure to agencies may affect their social security payments.<sup>63</sup>

13.52 These issues are exacerbated where English is not the first language and where there are issues related to the person’s decision-making capacity, such as the experience of trauma.

13.53 Some stakeholders submitted that all Commonwealth employees who have a decision making or intervention role with people experiencing family violence must undergo regular training in child abuse, domestic and family violence practice, to facilitate disclosure.<sup>64</sup>

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58 Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

59 ADFVC, *Submission CFV 71*, 11 May 2011.

60 Ibid.

61 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011. CALAAS operates two permanent offices in Alice Springs and Tennant Creek and operates the Welfare Rights Outreach Project (WROP) which provides legal and policy advice on welfare rights issues, casework, community legal education for Indigenous peoples in the Northern Territory, particularly on income management, housing and other social security matters.

62 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011.

63 WEAVE, *Submission CFV 58*, 27 April 2011.

64 WEAVE, *Submission CFV 58*, 27 April 2011.

*The appropriateness of compulsory IM for people experiencing family violence*

13.54 Most stakeholders indicated that they did not support Compulsory IM, or for the income management policy to be applied to people experiencing family violence.<sup>65</sup> Themes from submissions included:

- the considerable impact of trauma for persons experiencing family violence, concerns for informed decision making;
- the perpetrator blaming the welfare recipient for Compulsory IM;
- the undermining of fundamental principles of justice and human rights; and
- the lack of empirical evidence about the impact of income management on people experiencing family violence.<sup>66</sup>

13.55 For example, CALAAS stated that it did not support compulsory income management, nor the inclusion of family violence

as an indicator of vulnerability at either a legislative or policy level. Compulsory IM in any form and the full ability to manage any income is vital to victims of domestic and family violence.<sup>67</sup>

13.56 Similarly, NAAJA commented that it would have concern for the safety of a customer who was made subject to income management after a family violence incident, and queried the usefulness of income management in family violence.<sup>68</sup>

13.57 Stakeholders identified that income management should be assessed on the individual needs of the person experiencing family violence. They also commented that agency procedures and communication strategies with the person should ensure privacy and provide options.<sup>69</sup> Stakeholders also drew attention to the lack of autonomy for people experiencing family violence under the income management regime.<sup>70</sup> For example, a number of stakeholders indicated that the welfare recipient should be fully engaged with any decision on what percentage of their income, if any, may be quarantined. Full flexibility and control of the process by the person experiencing family violence was paramount. The Welfare Rights Centre Inc Qld

65 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011; North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011; ADFVC, *Submission CFV 71*, 11 May 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Welfare Rights Centre Queensland, *Submission CFV 66*, 5 May 2011; Sole Parents' Union, *Submission CFV 63*, 27 April 2011; Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

66 ADFVC, *Submission CFV 71*, 11 May 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011; Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011; WEAVE, *Submission CFV 58*, 27 April 2011.

67 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011.

68 North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011.

69 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011.

70 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; ADFVC, *Submission CFV 71*, 11 May 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011; Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011; Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

argued that the role of the social security system is to promote autonomy, dignity and choice.<sup>71</sup>

13.58 The ADFVC argued it would disempower people already experiencing family violence and only lead to more hardship for them.<sup>72</sup> Another commented that:

Family violence, the exercise of power and control of one person over another, is an attack on the individual's autonomy, agency, and the freedom of the victim. The risks of further disempowerment and loss of independence from compulsory income management are high. Replacing individual power and control with state power and control is at best only a risky stop-gap and at worst further abuse.<sup>73</sup>

13.59 Further, where a person experiencing family violence is placed on Compulsory IM following a violent incident, safety issues may arise for the victim, as the perpetrator may blame the victim for being income managed.<sup>74</sup> As one stakeholder remarked:

Family violence requires renewed and careful consideration in relation to social security law, especially given current income management policies and increasing knowledge of financial abuse and other financial aspects of family violence. Safety is probably a more fundamental consideration for family violence victims than for any other social security applicants ... the responsibility of the social security system to assist women whenever necessary to leave and re-build their lives is clear.<sup>75</sup>

13.60 Other stakeholders argued that people experiencing family violence should be exempt from Compulsory IM, except in cases where statutory case management was required;<sup>76</sup> and that family violence victimisation should not be a trigger for Compulsory IM.<sup>77</sup> Further, the Sole Parents' Union commented that income management should not apply to people on the basis of receiving social security payments.<sup>78</sup>

### **Exemptions**

13.61 In the Social Security Issues Paper, the ALRC asked whether people experiencing family violence should be exempt from income management in specified circumstances, where to do so would assist them to take steps to prevent or reduce violence.<sup>79</sup>

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71 Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011.

72 ADFVC, *Submission CFV 71*, 11 May 2011.

73 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011.

74 North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011.

75 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011.

76 Ibid.

77 WEAVE, *Submission CFV 58*, 27 April 2011.

78 Sole Parents' Union, *Submission CFV 63*, 27 April 2011.

79 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011), Question 40.

13.62 A number of stakeholders supported an unqualified exemption for people experiencing family violence.<sup>80</sup> One stakeholder supported an exemption for those people experiencing family violence, except where individual determinations are made within a statutory case management process.<sup>81</sup>

13.63 CAALAS submitted that access to an exemption is unduly onerous to navigate and places an administrative burden of proof on people seeking to be exempt from income management.<sup>82</sup> In addition, NAAJA considered that the exemption process is time consuming, for example, the review and appeal decision process.<sup>83</sup>

13.64 NAAJA suggested that the test time of 12 months under s 123UGD(1)(d) should be amended, for example, where a welfare recipient experiencing family violence has recently left a violent relationship and settled down to a safe environment, the person is still required to wait 12 months for the exemption period to end.<sup>84</sup>

### ALRC's views

13.65 Multiple issues affect people experiencing family violence, many of which are beyond the control of victims and their children. The ALRC considers that notable policy and implementation gaps exist within the legislative framework of income management, particularly as applied to victims of family violence.

13.66 The key concerns for people experiencing family violence raised in the submissions and during consultations were: the unsuitability of the compulsory measure; the vulnerability indicators and their application; privacy issues, including disclosure and consent; and the inadequate funding of services for welfare recipients to meet income management compliance requirements.

#### *Unsuitability of compulsory measures*

13.67 The complexity of family violence and the intertwining of family violence in a number of vulnerability indicators prompts questioning about whether Compulsory IM is an appropriate response. Later in the chapter the ALRC considers an alternative model, in light of the experience in Cape York, and whether a more nuanced response to income management can be achieved.

13.68 The *National Plan to Reduce Violence Against Women and Their Children* identified that specialist and mainstream services are critical to assist people to rebuild their lives following violence and the first point of contact for people experiencing family violence should also provide capable and compassionate assistance—including

80 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011; North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011; ADFVC, *Submission CFV 71*, 11 May 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011; Sole Parents' Union, *Submission CFV 63*, 27 April 2011; WEAVE, *Submission CFV 58*, 27 April 2011; Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

81 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011.

82 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011.

83 North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011.

84 *Ibid.*

specialist children services for those who have witnessed family violence.<sup>85</sup> Where ‘first contact’ takes place with Centrelink staff, for people experiencing family violence, the assessment to income manage a victim appears inconsistent with the National Plan.

13.69 If victims of family violence withhold information due to fear of income management or intervention, they are left without adequate protection. Compulsory income management makes withholding of information more likely. In addition, people experiencing family violence have many social pressures where the absence of support services to meet their statutory or personal requirements may affect their priority needs, or a lack of funded community shelters, refuges, or social or community housing that would result in homelessness. Income management fails to take into account the substantial effect of inadequate services.

13.70 The ALRC considers that treatment of people experiencing family violence should be determined on a case by case basis, with links to support services and immediate access to financial assistance, including individually determined access and control of their income management accounts.

#### **Indicators of vulnerability**

13.71 Questions may be raised about whether family violence should nevertheless be included as an express indicator of vulnerability—especially given the widely accepted view that economic abuse should be recognised as a form of family violence.<sup>86</sup> The ALRC notes that various vulnerability indicators may cause or result from exposure to family violence and therefore may lead to a determination for the application of Compulsory IM. However, the ALRC does not consider that Compulsory IM is an effective remedy to assist family violence.

13.72 The ALRC therefore proposes that family violence be considered as a reason why income management may be an inappropriate response to indicators of vulnerability. Amending the *Guide to Social Security Law* would allow decision makers to recognise the problems resulting from subjecting victims of family violence to required quarantining of income.

#### **Exemptions**

13.73 The ALRC considers that the general approach to exemptions within income management, as reflected in the decision-making principles under the *Social Security (Administration) Act*, would make it difficult for most people experiencing family violence to obtain an exemption. The decision-making criteria do not provide an automatic case for exemption for people experiencing family violence. Even if family violence is included as an exemption, the process for challenging exemptions is a time-

85 Department of Families, Housing, Community Services and Indigenous Affairs, *National Plan to Reduce Violence Against Women and Their Children—Including the First Three-year Action Plan* (2011).

86 As discussed above, the definition of ‘family violence’ recommended by the ALRC in Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), included ‘economic abuse’: Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), Recs 5–1, 6–1, 6–4.



consuming one and the onus is on the welfare recipient to demonstrate why he or she should be exempt.

13.74 The vulnerable position of people experiencing family violence, and the complex needs for their safety and protection, requires an urgent and simplified process that enables welfare recipients freely to enter and exit income management.

13.75 Submissions have mentioned the various problems for a person seeking an exemption and the process of appealing the refusal by a decision maker. The difficulty of meeting the requirements for exemption under the *Social Security (Administration) Act* may be exacerbated where people experiencing family violence live in rural, remote or discrete communities, because they have limited access to support services, low-income housing and temporary accommodation.

13.76 The ALRC proposes that persons experiencing family violence should not be subjected to Compulsory IM. This may be achieved in two ways, by:

- amending the *Guide to Social Security Law* to say that family violence should be taken into account in considering whether income management is an appropriate response to indicators of vulnerability; or
- including family violence as an exemption—which is likely to be ineffective unless the review process were streamlined.

13.77 These proposals should be supported by the adequate and regular funding of family violence services that provide support and safety for people experiencing family violence, and are a crucial link in the web of services necessary to support victims of family violence.

**Proposal 13–1** The *Social Security (Administration) Act 1999* (Cth) and the *Guide to Social Security Law* should be amended to ensure that a person or persons experiencing family violence are not subject to Compulsory Income Management.

**Question 13–1** Are there particular needs of people experiencing family violence, who receive income management, that have not been identified?

## Voluntary income management and family violence

13.78 Income management remains a highly controversial policy within urban, rural and remote Australian communities. As noted above, the most controversial welfare reform in income management has, and continues to be, the compulsory quarantining of a person's welfare payment. Despite various amendments to Compulsory IM, there has been an ongoing call to the Australian Government for its abolition.<sup>87</sup>

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87 United Nations Special Rapporteur, *Observations on the Northern Territory Emergency Response in Australia* (2010) <[http://indigenouspeoplesissues.com/attachments/4136\\_NTER\\_observations.pdf](http://indigenouspeoplesissues.com/attachments/4136_NTER_observations.pdf)> at 12 July 2011, point 12.

13.79 As described above, Voluntary IM measures provide an alternative approach to income management. Under the *Social Security (Administration) Act*, a welfare recipient must remain on income management for a minimum of 13 weeks.<sup>88</sup> The Secretary must terminate the Voluntary IM agreement on the request of the welfare recipient and the grounds of termination must be met.<sup>89</sup> When a recipient applies to terminate the voluntary agreement, the recipient cannot make a new voluntary agreement for a period of 21 days.<sup>90</sup>

### Cape York Welfare Reform model

13.80 The Cape York Welfare Reform model, legislated under the *Family Responsibilities Commission Act 2008* (FRCA), is an alternate model to that in the *Social Security (Administration) Act*. The income management regime is described as ‘conditional income management’.<sup>91</sup> The model is being trialled in the Cape York communities of Aurukun, Coen, Hope Vale, and Mossman Gorge and associated outstations, and will run until 31 December 2011.<sup>92</sup>

13.81 The legislative framework of the Cape York Welfare Reform model varies from the *Social Security (Administration) Act* system of income management. It is meant to design and adapt income management measures to meet the needs of individuals and their communities.<sup>93</sup> The FRCA establishes the Families Responsibilities Commission (FRC), which has the power to make decisions in relation to notices given to it by agencies concerning matters including school attendance, enrolment, and child safety and welfare matters.<sup>94</sup> The FRC has power to hold a conference about the agency notice to discuss the matter with the relevant person to whom the notice relates, after which it may decide to refer the person to Centrelink to be subject to income management.<sup>95</sup> The FRC may require a person to be subject to income management for at least three months, but not more than one year.<sup>96</sup> The FRC advises Centrelink as to how much of a person’s income may be managed—this is likely to be 60 or 75% of regular fortnightly payments and all of any advance and lump sum payments.<sup>97</sup>

88 *Social Security (Administration) Act 1999* (Cth) ss 123UM, 123UN.

89 *Ibid* s 123UO.

90 *Ibid*.

91 Cape York Institute for Leadership and Policy, *Welfare Reform* (2010) <<http://www.cyi.org.au/welfarereform.aspx>> at 22 July 2011. The notion of conditional welfare as a tool of welfare reform takes a ‘carrot and stick’ approach to welfare recipients receiving government payments, which rewards or punishes the welfare recipient according to their behaviour or compliance to receiving welfare entitlements and payments.

92 Department of Families, Housing, Community Services and Indigenous Affairs, ‘Cape York Welfare Reform’ <<http://www.fahcsia.gov.au/sa/families/progserv/welfarereform/Pages/CapeYorkWelfareReform.aspx>> at 12 August 2011.

93 Family Responsibilities Commission, *Annual Report 2010-2011*, 1.

94 *Family Responsibilities Commission Act 2008* (Qld) s 40 (Notice about school attendance); s 41 (Notice About School Enrolment); s 42 (Notice about child safety and welfare measures).

95 *Ibid* s 69.

96 *Ibid* s 69(1)(b)(iv).

97 Department of Families, Housing, Community Services and Indigenous Affairs, ‘Income Management for Cape York Welfare Reform’, <<http://www.fahcsia.gov.au/sa/families/pubs/CapeYorkWelfareReform/Pages/IncomeManagement.aspx>> at 12 August 2011.

13.82 The main difference between the Cape York Welfare Reform model and that of the *Social Security (Administration) Act* is that the Cape York policy does not impose blanket quarantining of welfare payments.<sup>98</sup> Other differences include:

- the Commissioners of the FRC recognise customary practice and take into account the customs and traditions of the individual;<sup>99</sup>
- appointed Commissioners are representative of their community and satisfy the ‘good standing’ criteria for appointment;<sup>100</sup>
- a community resident in Cape York can apply to the FRC for a voluntary referral to income management; the FRC takes into account ‘the best interest of the person, a child of the person or another member of the person’s family’<sup>101</sup> in the decision-making process;
- the person or welfare recipient may participate in decision making to income manage—for example, the FRC holds conferences with community members<sup>102</sup> to enable the person to enter into a Family Responsibilities Agreement and prepare a case plan;<sup>103</sup> and
- under the FRCA, income management is applied as a last resort.<sup>104</sup>

13.83 FaHCSIA plans an evaluation of the welfare reform regime implemented under the Cape York model in 2011.

13.84 The Cape York Welfare Reform model is generally consistent with recommendations in the *National Plan to Reduce Violence Against Women and Their Children (2010–2022)* and the *Royal Commission into Aboriginal Deaths in Custody* (the Royal Commission). The *National Plan* encouraged communities to identify and develop their own solutions to localised family violence;<sup>105</sup> and the Royal Commission recommended that Indigenous communities be self-determining and resolve violence within their own communities.<sup>106</sup>

98 Cape York Institute for Leadership and Policy, *Welfare Reform* (2010) <<http://www.cyi.org.au/welfarereform.aspx>> at 22 July 2011.

99 *Family Responsibilities Commission Act 2008* (Qld) s 5 (Principles for administering Act); *Family Responsibilities Commission Act 2008* (Qld) s 63 (Particular matters about conduct of conference).

100 *Family Responsibilities Commission Act 2008* (Qld) s 12 (Membership of commission); *Family Responsibilities Commission Act 2008* (Qld) s 18 (Eligibility for appointment as local commissioner). Welfare recipients outside the Cape York community are assessed by the relevant department.

101 *Family Responsibilities Commission Act 2008* (Qld) s 108 (Responding to request about referral to income management).

102 *Ibid* s 5(2)(c) provides that the principles for administering the Act include that ‘Aboriginal tradition and Island custom must be taken into account in matters involving Aboriginal people or Torres Strait Islanders’.

103 *Ibid* s 68 (Decision to enter into agreement). *Family Responsibilities Commission Act 2008* (Qld) s 76 (Meaning of case plan).

104 P Billings, ‘Social Welfare Experiments in Australia: More Trials for Aboriginal families?’ (2010) 17 *Journal of Social Security Welfare* 164, [17].

105 Department of Families, Housing, Community Services and Indigenous Affairs, *National Plan to Reduce Violence Against Women and Their Children—Including the First Three-year Action Plan* (2011), 18–24.

106 P Memmott and others, *Violence in Indigenous Communities* (2001), prepared for the Crime Prevention Branch, Attorney-General’s Department, [17].

13.85 The Cape York Welfare Reform model is also consistent with the findings of the Fitzgerald Cape York Justice Study, which noted that government policies aiming to protect victims of violence have little hope of success if the community is not engaged in the process. It recommended developing community-based solutions to meet the needs of victims.<sup>107</sup>

13.86 These reports and studies emphasised the importance of individual agency and community involvement. By contrast, income management under the *Social Security (Administration) Act*—particularly compulsory quarantining of income—is inherently paternalistic, eroding individual agency and community self-determination.<sup>108</sup>

### Submissions and consultations

13.87 In the Social Security Issues Paper, the ALRC asked whether voluntary income management for people experiencing family violence should be adopted more broadly and, if so, how this should be done.<sup>109</sup> The ALRC also asked whether there was any evidence that income management has improved the safety of people experiencing family violence.<sup>110</sup>

#### *Support for voluntary income management*

13.88 Although most stakeholders did not support Compulsory IM,<sup>111</sup> many submissions expressed qualified support for voluntary income management measures, provided they are flexible and focused on the individual needs of people experiencing family violence.<sup>112</sup> In addition, a number of stakeholders commented on the problems that exist under the current Voluntary IM measure.

13.89 CAALAS submitted that the provisions are unduly inflexible: 50% of the welfare recipient's income is quarantined, and recipients must remain on the Voluntary IM measure for 13 weeks before being able to exit. CAALAS argued that people experiencing family violence should be able to determine the percentage of their payment to be quarantined and not be subject to a minimum time period on income management. CAALAS suggested that one way of increasing flexibility would be to amend s 61(a) of the *Social Security (Administration) Act* to allow an individual entering a voluntary agreement under s 123UM to determine the deductible portion of a

107 Human Rights and Equal Opportunity Commission, *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities: Key Issues* (2006) 113.

108 R Braaf and I Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (2011), 100–102.

109 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011), Question 43.

110 *Ibid.*, Question 44.

111 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011; North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011; ADFVC, *Submission CFV 71*, 11 May 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011; Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011; Sole Parents' Union, *Submission CFV 63*, 27 April 2011; WEAVE, *Submission CFV 58*, 27 April 2011; Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

112 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, *Submission CFV 65*, 4 May 2011, Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

welfare payment. CAALAS also noted the importance of ensuring that an individual entering a Voluntary IM arrangement is fully informed and understands the options for exiting the arrangement.<sup>113</sup>

13.90 WEAVE commented that income management should only be available for ‘voluntary use in circumstances where a person has a demonstrated history of being unable to manage their income’. WEAVE noted that conditions such as intellectual disability, chronic substance abuse or a gambling addiction may be relevant in this determination.<sup>114</sup>

13.91 The Sole Parents’ Union submitted that the implementation of an income management system should be offered on a needs basis.<sup>115</sup> The Welfare Rights Centre Inc Queensland suggested that this had the potential to offer dignity and choice in the very complex system of social security compliance.<sup>116</sup>

13.92 The ADFVC submitted that a system of voluntary income management should be supported by voluntary financial counselling and access to financial products. As their research showed,

women who were able to stabilise their financial situation quickly after separation were doing much better than women who were not. Women who were able to find long term, affordable accommodation, who were able to find work, who did not have protracted legal battles and who could attend to health needs were doing better than those who were not.<sup>117</sup>

### *The need for evidence*

13.93 A number of stakeholders were critical of the lack of appropriate evidence-based research to evaluate the full effect of income management—particularly for people experiencing family violence. For example, the Welfare Rights Centre Inc Queensland commented that ‘[t]he evaluation of income management has been inadequate and inconclusive’.<sup>118</sup>

13.94 The Welfare Centre NSW highlighted this concern:

The Government is pursuing financial control measures in the absence of clear evidence that either it will deliver positive benefits or that massive administrative costs of income management will be offset by significant improvements in the social and economic health of those targeted by this regime.<sup>119</sup>

13.95 The Welfare Rights Centre NSW emphasised the importance of further evidence-based research to identify and recommend any progressive improvements from amended income management policy.<sup>120</sup>

113 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011.

114 WEAVE, *Submission CFV 58*, 27 April 2011.

115 Sole Parents’ Union, *Submission CFV 63*, 27 April 2011.

116 Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011.

117 ADFVC, *Submission CFV 71*, 11 May 2011.

118 Welfare Rights Centre Inc Queensland, *Submission CFV 66*, 5 May 2011. See also, Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

119 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

120 Ibid.

The question of safety for people experiencing family violence, including children, is an issue that the evaluation into the extension of Compulsory Income Management ... there is no reliable evidence about whether income management per se, makes for safer families and children ... The question of whether income management has improved family safety is highly complex and controversial.<sup>121</sup>

### **ALRC's views**

13.96 Income management under the NTER and the New IM measure continue to be debated as government policy and operate upon the most disadvantaged people in Australia, those who receive Centrelink payments and entitlements. The policy operates on an assumption that income management improves wellbeing.

13.97 The ALRC considers that the compulsory element of income management may hinder access to welfare and support for victims of family violence. A more flexible voluntary approach to income management may provide a more measured response. However, this reform approach should focus on ensuring individual autonomy and respecting the core principles of human rights in the context of social security.

13.98 The ALRC considers that the Cape York Welfare Reform model provides an instructive model for the Australian Government and the administering agencies of welfare reform. Under the Cape York model there is a great deal of flexibility in the approach to income management and a focus on the individual needs of the person. In contrast with the *Social Security (Administration) Act* model, the Cape York Welfare Reform model provides more engagement and empowerment of the individual within welfare reform and involves the welfare recipient in the decision-making process and the determination of income management.

13.99 The Cape York Welfare Reform model thus provides a basis on which to conduct further research and trials for a flexible voluntary policy, that is an opt-in and opt-out one, coordinated with meaningful community consultation. As the evidence from the Cape York trial becomes available and is reviewed, it would be timely to review the income management approach more generally—in particular for people experiencing family violence.

13.100 Many submissions recognised the importance of evidence-based policies, and the ALRC considers that any specific recommendations should be made only after the development of an evidence base. The ALRC suggests developing an independent assessment of the effectiveness of voluntary income management for people experiencing family violence. This assessment should include consideration of the Cape York model of income management. This process should incorporate the active participation of the community and family violence service providers to identify and evaluate the effect of programs on people experiencing family violence.

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121 Ibid.

13.101 Aspects of voluntary income management schemes that any assessment should consider include:

- ways to ensure that individuals understand the consequences of voluntary income management, particularly where victims of family violence may be experiencing trauma or have language barriers;
- options for individuals to leave voluntary income management;
- ways in which the community may be involved in voluntary income management to ensure appropriate support for individuals; and
- other measures, such as financial counselling, which may support and strengthen the effectiveness of any voluntary income management measures.

13.102 In the ALRC's view, it is important to offer a flexible welfare policy to address the needs and safety of the welfare recipient and his or her children. Such an approach will also need to apply to those welfare recipients under the original NTER who are subject to Compulsory IM.

**Proposal 13–2** In order to inform the development of a voluntary income management system, the Australian Government should commission an independent assessment of voluntary income management on people experiencing family violence, including the consideration of the Cape York Welfare Reform model of income management.

**Proposal 13–3** Based on the assessment of the Cape York Welfare Reform model of income management in Proposal 13–2, the Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) and the *Guide to Social Security Law* to create a more flexible Voluntary Income Management model.

**Question 13–2** In what other ways, if any, could Commonwealth social security law and practice be improved to better protect the safety of people experiencing family violence?

## Accounts and BasicsCard

13.103 Under income management, payments to particular welfare recipients are held in separate, notional, accounts called 'income management accounts'.<sup>122</sup> A welfare recipient under income management may be issued with a stored value card, vouchers or receive other approved payments.<sup>123</sup> Stored value cards called 'BasicsCards', may be used at community stores and other approved outlets. Stored value cards, vouchers or approved payments may not be used to purchase excluded

122 *Social Security (Administration) Act 1999* (Cth) s 123WA.

123 *Ibid* pt 3B, div 6, subdiv B.

goods and services, which include alcoholic beverages, tobacco products, pornographic material and gambling.<sup>124</sup>

13.104 Concerns have been raised, however, about unintended consequences of the income management account system—including for people experiencing family violence. Problems have been identified in relation to:

- obtaining access to money for travelling interstate;
- delays in the transfer of needed funds;
- increased cost of goods and services through the use of the BasicsCard because of the lack of community stores or merchants;
- limits placed on daily expenditure using the BasicsCard are problematic during a crisis of family violence;
- restricted access to account balances because of inadequate facilities and technology; and
- assessment and reassessment of priority needs by Centrelink and at the approved store, which can be time consuming, invasive and demeaning, because the recipient must seek permission to purchase goods and services not covered by the priority needs list.<sup>125</sup>

13.105 Under income management, access to welfare payments for other goods and services is made subject to rules that determine when welfare recipients are granted access to their money and what payments may be spent on.<sup>126</sup> These are called ‘Restricted or Unrestricted Direct Payments’.<sup>127</sup> With respect to a restricted payment, the welfare recipient must demonstrate a genuine need and meet the priority needs list.<sup>128</sup> Subject to Centrelink approval, the unrestricted payment may allow access to part or, in some certain circumstances, all of the welfare recipient’s income-managed funds.<sup>129</sup>

124 Ibid s 123TI.

125 National Welfare Rights Network, *Submission to Senate Community Affairs Committee Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* (2010), 26. See *Social Security (Administration) Act 1999* (Cth) s 123TH.

126 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011.

127 *Social Security (Administration) Act 1999* (Cth) s 123YM, ‘restricted direct payments’; s 123YO, ‘unrestricted direct payments’. Restricted Direct Payments are used for Compulsory IM; and Unrestricted Direct Payments are used for child protection IM and Voluntary IM, where required, to reduce the percentage of income management ‘quarantined’. An Unrestricted Direct Payment is provided for all income management measures for direct payment by cheque, cash or store value card to the welfare recipient’s income managed account or with the recipients consent, to a third party: Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011.

128 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011; [11.1.3.80].

129 Ibid, [11.1.3.90].



13.106 In a crisis situation for people experiencing family violence, welfare recipients require Centrelink approval for a direct transfer of funds from an income management account to the person's personal bank account and under Compulsory IM the 'Restricted Direct Payments'<sup>130</sup> are difficult to obtain, in times of crisis, for victims of family violence.

13.107 The social security system has been described as 'requiring a micro examination of every aspect of a recipient's financial circumstances that exceeds the rigours of applying for a bank loan'.<sup>131</sup> Under income management, welfare recipients who receive quarantined payments have minimal control over their income and are scrutinised on all expenditures or intended purchases—for example, in advance payments for whitegoods. Access to funds to an income management account is based on narrow criteria that do not take into account the 'totality of a person's circumstances'.<sup>132</sup>

13.108 The decision-making principles under social security law, as referred to earlier, may not be flexible enough to assist victims of family violence to leave their residence or community, or to take other urgent steps to avoid violence. Access to resources to cover an immediate departure is likely to be limited by the use of the BasicsCard. Moreover, travel or other crisis needs where a person has to escape family violence may not amount to a priority need.<sup>133</sup>

13.109 It has also been observed that the restrictions of the BasicsCard may affect cultural sharing practices—for example, for Indigenous communities during 'sorry business', and where cash is contributed to the deceased's family.<sup>134</sup> Where family members have experienced family violence, an inability to contribute an amount of cash may exacerbate their vulnerability to the pressures of immediate and extended family, especially where family violence already exists; these socio-cultural practices can apply to other groups.

13.110 In addition, for remote, discrete and rural communities, geographical isolation combined with the lack of transport and accommodation may inhibit access to a person's income management account funds or use of the BasicsCard; and also the ability to attend Centrelink for an emergency payment.

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130 A Restricted Direct Payment may be made available for a specific purpose to an income managed account of the welfare recipient or a joint account or to a third party. The purpose of this payment is to provide an alternative to cash payment. See the Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011, [11.1.3.80]. See *Social Security (Administration) Act 1999* (Cth) s 123YM.

131 National Welfare Rights Network, *Analysis of the Exposure Drafts of Income Management Policy Outlines*, 22 June 2010 (2010), 6.

132 *Ibid.*, 2.

133 *Social Security (Administration) Act 1999* (Cth) s 123TH. Under the income management regime amounts will be debited from a person's income management account for the purposes of meeting priority needs. Other debits require a special request under s 123YA.

134 Northern Territory Council of Social Service, *Submission to the Senate Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* (2010), 4.

13.111 Other access issues for the use and operation of the BasicsCard include limited operating locations (the location where the BasicsCard can be read—described as ‘kiosks’). In addition, there are privacy concerns for using the BasicsCard, for example, there is no anonymity for people carrying the card, especially in communities where privacy concerns exist and where the perpetrator and the victim/s reside in lowly populated areas.

13.112 In the case of a deceased welfare recipient, there are other issues for residual funds left in an income management account.<sup>135</sup> The *Guide to Social Security Law* sets out how the deceased’s account is disbursed and to whom.<sup>136</sup> For welfare recipients who die without a will (intestate), or who have not identified a person to administer and distribute their residual funds in the income management account, the funds may remain in the person’s account.<sup>137</sup>

13.113 For example, where the victim’s surviving family and children are identified to Centrelink as payment nominees, the disbursement of the deceased’s funds can provide ongoing safety and protection; the surviving children or dependants are to be prioritised under principles for ‘the best interests of the children’.<sup>138</sup> The report by the Australian Domestic and Family Violence Clearinghouse (ADFVC) identified that abuse continues post-separation, and beyond the acts of violence to the surviving children:

Relationship abuse can generate physical and mental trauma for women and their children, often extending well beyond the cessation of the abusive behaviour.<sup>139</sup>

### Submissions and consultations

13.114 In the Social Security Issues Paper, the ALRC asked about changes that could be made to law or practice relating to the administration of income management accounts to assist welfare recipients who are victims of family violence. In particular, the ALRC asked whether there were alternatives to stored value cards such as the BasicsCard, that may provide additional flexibility or portability, where a person needs to escape family violence and possible changes to ‘priority needs’ for the purposes of the income management regime.<sup>140</sup>

13.115 Stakeholders identified a range of problems with the BasicsCard—particularly the lack of flexibility and difficulties of access.

135 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011 at [11.1.11.80]; *Social Security (Administration) Act 1999* (Cth) ss 123WL and 123WM.

136 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <[www.fahcsia.gov.au/guides\\_acts/](http://www.fahcsia.gov.au/guides_acts/)> at 22 July 2011 at [11.1.11.80]; ss 123WL and 123WM.

137 *Social Security (Administration) Act 1999* (Cth) ss 123WL and 123WM.

138 *Ibid* s 123B; any children or surviving dependants should be amended under this provision.

139 R Braaf and IMeyering, *Seeking Security: Promoting Women’s Economic Wellbeing Following Domestic Violence* (2011).

140 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011), Questions 41, 42.

***Inflexibility***

13.116 CAALAS, for example, submitted that, for people experiencing family violence, the ability to manage and control their payments is vital and any restriction on the use of a person's social security payment could directly affect their safety including access to travel, finding new accommodation, and protecting their children or dependants.<sup>141</sup> CAALAS therefore recommended that travel and crisis needs should be included in the 'priority needs' provision of the *Social Security (Administration) Act* for the purposes of income management.<sup>142</sup>

13.117 As NAAJA pointed out, although income-managed funds are not able to be spent on 'excluded goods' under the legislation, there is no additional restriction on what the remaining managed monies may be spent on—for example, the balance could be spent on DVDs.<sup>143</sup>

***Access issues***

13.118 Many stakeholders raised additional issues that continue to make the use and specific operation of the BasicsCard system ineffective, including:

- obtaining an account balance and being denied by failed systems;<sup>144</sup>
- limited access due to poor internet service;<sup>145</sup>
- limited access to balance readers as they are only in certain locations and often offline;<sup>146</sup>
- limited or no access due to poor mobile reception;<sup>147</sup>
- limited card access and ineffective use results in welfare recipient being unable to meet 'priority needs';<sup>148</sup>
- limited literacy and numeracy skills of the recipient impacts on card use;
- limited or no access to permanent Centrelink offices and the Indigenous Call Centre (ICC) in remote and rural regions;<sup>149</sup> and
- the use of the BasicsCard may demean, humiliate and control persons experiencing family violence.<sup>150</sup>

141 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011.

142 Ibid.

143 North Australian Aboriginal Justice Agency, *Submission CFV 73*, 17 May 2011.

144 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011.

145 Ibid.

146 Ibid.

147 Ibid.

148 Ibid.

149 Ibid.

150 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

13.119 CAALAS submitted that a more accessible process is required to obtain the balance from the BasicsCard, by an ATM receipt or by the printed record on the end of a store receipt.<sup>151</sup> CAALAS also suggested that Unrestricted Direct Payments should be utilised by Centrelink in relation to people experiencing family violence,<sup>152</sup> as this method provides an improved access to funds. CAALAS expressed the view that:

Changes to the income management regime would facilitate the immediate transfer of income managed funds to a person's bank account or in cash in situations of crisis.<sup>153</sup>

### ALRC's views

13.120 The use and operation of the BasicsCard reveals a series of significant problems that directly affect the welfare recipient in accessing their income management account. These problems are magnified when they occur in rural or remote areas of Australia, and for people experiencing family violence in times of crisis or who need to flee violence to protect their safety and that of their children. In light of the many serious issues raised by stakeholders the ALRC considers that welfare recipients need to have access to their income managed funds by the transfer of funds into their personal account.

13.121 Although the ALRC does not make a proposal on the BasicsCard, the ALRC anticipates that if a fully flexible and voluntary income management system is introduced then the BasicsCard will be reviewed in due course.

13.122 The ALRC considers that a number of changes with respect to the access of income management accounts would provide support for, and therefore improve the safety of, victims of family violence. These also include ensuring the residual funds from the deceased victim's income management account are disbursed to their children, waiving the waiting period for crisis payments, and ensuring that the BasicsCard is fully accessible for people experiencing family violence.

13.123 In the ALRCs view, given the complex environment of family violence it is imperative that people experiencing family violence should have unfettered access to their welfare payments for travel and crisis needs, and on this basis the law should be amended to recognise travel and crisis needs as priority needs.

**Proposal 13–4** Priority needs, for the purposes of s 123TH of the *Social Security (Administration) Act 1999* (Cth) are goods and services that are not excluded for the welfare recipient to purchase. The definition of 'priority needs' in s 123TH and the *Guide to Social Security Law* should be amended to include travel or other crisis needs for people experiencing family violence.

151 Central Australian Aboriginal Legal Aid Service, *Submission CFV 78*, 2 June 2011.

152 Ibid.

153 Ibid.