



COMBINED ABORIGINAL ORGANISATIONS' RESPONSE TO EXPOSURE DRAFT OF INCOME MANAGEMENT POLICY OUTLINES

The Central Land Council (CLC), the Central Australian Aboriginal Legal Aid Service (CAALAS), the Northern Land Council (NLC), the North Australian Aboriginal Justice Agency (NAAJA) and the Aboriginal Medical Services Alliance NT (AMSANT) have combined to comment on the exposure drafts.

The combined Aboriginal organisations' recognise the role of government in determining how and in what circumstances people receive social security benefits. We thank the Australian Government for providing us with the opportunity to provide information and feedback on existing and proposed law and policy. Our comments are informed by our work with Aboriginal people across the Northern Territory, including in town camps and remote communities and our respective commitments to advancing the wellbeing and interests of Aboriginal people.

Our comments cover:

1. General comments on the operation of the current income management regime and the new income management regime as detailed in the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill 2009 (the Bill);
2. Identification of gaps in coverage of the exposure drafts;
3. Overarching concerns in relation to each policy outline;
4. Specific issues and concerns relating to each policy outline – necessarily some of these issues in our view require a significant re-think of government policy and approach, but we feel it is the role of government, not our organisations, to develop workable policy solutions; and
5. Recommendations where we have felt it appropriate and within our areas of expertise to do so.

1. THE INCOME MANAGEMENT SYSTEM

The combined Aboriginal organisations' firm position is that compulsory welfare quarantining should not continue. Blanket income management is discriminatory and does not promote responsible behaviour. Income management should be voluntary, or

should only apply on the basis of substantiated child protection, school enrolment or school attendance triggers.

We support a change in the current arrangements from a blanket approach to an approach which targets individual behaviours, but do not consider this is achieved by the exposure drafts.

In respect of the continuation and expansion of the Australian Government's program of 'welfare reform', the following are essential:

1. Immediate establishment of ongoing monitoring and evaluation of any welfare reform measures should be a priority. This information should be made publicly available;
2. Monitoring and evaluation to include an assessment of costs of implementation against the benefits associated with the changes. We remain very concerned that the huge cost of income management is at the expense of other essential services and infrastructure;
3. A specialist taskforce to be created, including local Aboriginal representation and specialist expertise, to oversee the evaluation of any welfare reform programs and develop a comprehensive welfare reform policy framework;
4. Financial literacy support programs and access to banking services be expanded across the Northern Territory and in remote communities in particular. In order to build capacity and employment within communities, we recommend that a small cohort of people in each community be invited to train for and deliver money management courses in their own communities.
5. The Secretary and the Minister should have the power to exempt a person from the new categories of income management, where the person does not fit into the new exemption categories.

2. OUR CONCERNS ABOUT THE POLICY OUTLINES

In respect of the exposure draft of the policy outlines, the combined Aboriginal organisations share the following concerns about their appropriateness and workability:

1. The effect of the policy outlines, particularly in the broad definition of 'vulnerable' and 'financially vulnerable' will be to continue to impose compulsory income management on the vast majority of Aboriginal people in the Northern Territory, albeit for different reasons. The Australian Government has made a directly racially discriminatory policy, indirectly racially discriminatory.
2. The requirements imposed on, and questioning of, social security recipients are highly intrusive. Members of society who are not social security recipients are not required to comply with and endure such intrusion. The Australian Government should consider the privacy implications of the proposed instruments as recommended by the Privacy Commission in its submission to the Senate Community Affairs Committee Inquiry into Social Security and

Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and other legislation (the **Welfare Reform Bill**).¹

3. Compulsory income management is cast as a solution to financial hardship, financial exploitation, domestic violence, homelessness and mental illness. Vulnerable people will be income managed indefinitely if the Australian Government does not devote significant resources to additional support services to social security recipients, particularly to those who are assessed as 'vulnerable'.
4. The limited capacity and resources of Centrelink staff will be a significant challenge to the rollout of the new income management regime, particularly in remote Aboriginal communities. We understand that no new staff will be employed to implement and maintain the new regime, despite a potential huge increase in workload and skills and ability required to undertake assessments and process exemption requests.
5. Resources need to be identified to secure additional interpreters to be employed at Centrelink, in customer service centres, with members of remote servicing teams and with social workers. As a large proportion of the Aboriginal population of the Northern Territory speak English as a second, third or fourth language, it is essential that people be given the opportunity to express themselves in their first language, particularly in relation to the complex questions outlined in the policy outlines.

Gaps in the draft exposure documents

Voluntary income management

We note that no draft instrument has been released which details the voluntary income management process. The combined Aboriginal organisations strongly recommend that such an instrument should be made available.

Persons without dependent children

There is no draft policy outline available in relation to this category for exemption. At the very least, such an outline should be made to clarify that the 26 weeks work need not be continuous, and that work at varying hours per week, including less than 15 hrs per week, but averaging 15 hours per week, is sufficient to satisfy the test.

Furthermore, no instrument has been made available setting out a list of activities that may qualify a person for exemption under this category. We strongly recommend that such instrument should be made as a matter of urgency. This instrument should include voluntary work and participation in CDEP as qualifying for an exemption.

Child protection income management

¹ The Office of the Privacy Commissioner's submission is accessible at: http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/sublist.htm, as at 22 June 2010.

We note that no draft instrument has been released which details the child protection income management process. The combined Aboriginal organisations strongly recommend that such an instrument should be made available.

Our concerns with Northern Territory Families and Children (NTFC) recommending to Centrelink that a person be income managed are detailed in the NAAJA and CAALAS submissions to the Senate Community Affairs Committee Inquiry referred to above.²

We reiterate these concerns, particularly in light of the Department of Health and Families submission to the current inquiry into the child protection system in the Northern Territory which states "The Department does not currently have the capacity to sustain an adequate response to the growing demand in intake, child protection investigations and out of home care".³

Accordingly, the additional function of assessing and recommending that person be income managed should not be imposed on NTFC child protection workers whilst the Department of Health and Families lacks the resources and capacity to undertake its core functions.

School enrolment income management

We note that no draft instrument has been released which details the school enrolment income management process. The combined Aboriginal organisations strongly recommend that such an instrument should be made available.

POLICY OUTLINE 1

Vulnerable Welfare Payment Recipient Measure s123UGA(2)

We express the following concerns regarding the content of Policy Outline 1:

'Vulnerable welfare payment recipient'

'Vulnerable welfare recipient' is not defined in the instrument or in the Act.

Recommendation:

- The definition of 'vulnerable welfare recipient' should be incorporated into the *Social Security (Administration) Act 1999*, rather than be relegated to an Instrument.
- 'vulnerable welfare recipient' should be restrictively defined as a 'person experiencing economic abuse'.
- The legislation should define 'economic abuse'.

² The NAAJA and CAALAS submissions are accessible at: http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/sublist.htm, as at 22 June 2010.

³ NT Department of Health and Families, Submission into the Inquiry into Child Protection System in the Northern Territory, 7 April 2010, at 3.

- The policy outline should detail that a person can only be made vulnerable if the 'economic abuse' is a direct cause of a consistent and ongoing failure to meet priority needs, likely to be ongoing and is such that the application of income management would assist the person to meet their priority needs

Decision-making principles

Policy Outline 1 goes beyond the objects of the Act and attempts to resolve issues of poverty via income management, without the evidence to support it. The Australian Government has no evidence that income management will achieve the expanded aims of the new regime – to 'assist' a person suffering from financial hardship, domestic and family violence, financial exploitation, substance abuse, gambling addiction, mental health issues or homelessness.

The listed vulnerabilities are caused by a range of systemic social and environmental factors, which are left unresolved by the imposition of income management. Unless the structural causes of disadvantage are addressed, compulsory income management will result in a large body of the Northern Territory population remaining subject to income management on an indefinite basis.

CSW as Decision Maker

We are deeply concerned that social security recipients, and in particular women, will not divulge their personal circumstances to a CSW (**CSW**) if there is a risk of being income managed as a result. This will work to prevent women from accessing appropriate payments, such as crisis payments or referrals to community support agencies, such as a women's shelter and potentially the NT Police.

We consider that this will undermine the vital role of CSWs and will have consequent negative impacts on the wellbeing of social security recipients, contrary to the objects of the legislation.

We are concerned that CSWs lack the relevant qualifications and job skills to make assessments as to whether a person is 'not meeting their priority needs...as a result of experiencing an indicator of vulnerability'. This presumably requires an analysis of a person's income and expenditure to establish if priority needs are being met, and then a causative analysis as to whether this is a direct result of their 'vulnerability'. Such an analysis necessitates an assessment of a person's personal relationships, their mental health, any addictive behaviors, their budget and their self care.

Recommendation: Restrictively defining vulnerability as suggested above would obviate the need for such speculative determinations to be made.

It is inappropriate for a CSW to impose income management on a person based on a speculative assessment of future events, in circumstances where the Australian Government is unable to provide unequivocal evidence that income management achieves its current objectives or will work to achieve its proposed objectives.

Recommendation: The words 'or in the foreseeable future' should be removed from dot point two.

Assessments as to 'vulnerability' should be carried out by people who have developed long-term relationships built on trust, respect and understanding. We remain concerned that the high workloads of CSWs limits their ability to build relationships, particularly when servicing remote areas.

Recommendation: We encourage the Australian Government to place social work staff in local and community-based agencies within remote communities that might be better placed in playing a role in assessments, including local clinics and women's centres.

At dot point 3, the decision maker is required to consider whether 'the indicator of vulnerability is of a type that could be assisted by income management'.

Recommendation: The words 'is of a type' be replaced with 'such' or word/s to similar effect so that the decision maker is required to satisfy themselves that the particular experience of vulnerability is one that will be assisted or alleviated by the imposition of income management.

Indicators of vulnerability

This section begins with the statement 'for the purposes of this instrument, a vulnerable person is a person who is experiencing one or more of the following indicators'. This statement potentially makes a person's experience of any of these indicators a trigger for income management under the category, however temporary or limited.

We understand that the Australian Government's aim in this category is to compulsory income management those people who are captured under the decision making principles. Using the wording 'a vulnerable person is a person who is experiencing ...' may mislead decision-makers, some of whom may not understand the distinction between the loose use of the words 'vulnerable person' and the legislated term 'vulnerable welfare payment recipient'. Given this, some decision-makers may feel they are required or empowered to make a determination that a person is a vulnerable welfare payment recipient simply on the basis that the person experiences an indicator of vulnerability.

Recommendation: That the preamble to this section be amended to reflect that the listed items are factors to be used to assess whether or not a person is a vulnerable welfare payment recipient.

Experiencing an 'indicator of vulnerability'

The breadth of the 'indicators of vulnerability' is of great concern. Policy Outline 1 is cast so widely that the majority of Aboriginal people currently income managed in the Northern Territory will remain so, despite government rhetoric regarding the 'targeted' intent of the new regime. The regime will simply change from a directly discriminatory regime to an indirectly discriminatory regime.

Recommendation: That Policy Outline 1 include a clear statement that an indicator of vulnerability will enliven a determination that person is a 'vulnerable welfare payment recipient' only where that indicator is present, a direct cause of a consistent and ongoing failure to meet priority needs, likely to be ongoing and is such that the application of income management would assist the person to meet their priority needs.

Financial Hardship

The low rate of social security payments in Australia⁴ means that many social security recipients, at some time or another, will experience 'financial hardship' as defined in Policy Outline 1 as a consequence, rather than because of poor financial management.

The definition of 'financial hardship' as it currently stands will not work to meet the stated objects of the Bill. The lack of financial resources of social security recipients occurs not necessarily because of an inability to manage fixed income, or expenditure on 'excluded goods', but rather is a result of the systemic causes of poverty and receiving a level of payment that is inadequate to meet the needs of themselves, their partners and their families.

In practice, including financial hardship as an indicator will lead to the income management of individuals who are otherwise meeting the objects of the legislation, but, due to the low rate of social security payments, will have difficulty in meeting their needs.

It is not clear how income management will assist a person suffering from financial hardship, as income management imposes numerous financial and administrative burdens on social security recipients, as detailed in the NAAJA and CAALAS submissions to the Senate Community Affairs Committee Inquiry previously referred to. BasicsCards also restrict people from using balances of less \$5 in some stores, which in itself can contribute to financial hardship.

Recommendation: This indicator should be removed.

Domestic and Family Violence

It is inappropriate and ineffective to use income management to address an issue properly the prerogative of the criminal justice system, the Courts and appropriately funded associated support services.

It cannot be assumed that a person suffering domestic violence 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. Compelling victims of domestic violence to surrender control of their household finances compounds the disempowerment created by domestic violence.

Full ability to manage any income is vital to victims of domestic violence and family violence who are seeking to escape violence. Any restriction on a victim's use of social security payments may limit a victim's ability to travel or find alternative accommodation, exacerbated by the inflexibility of the BasicsCard in relation to out-of-state travel.

⁴ For further information, see Australian Council of Social Service, "Who is missing out? Hardship among low income Australians", *ACOSS Info Paper* (December 2008).

If a person suffering from domestic and family violence considers that they will be assisted by income management, they should be offered voluntary income management. Our concerns with the proposed voluntary income management model in are detailed in the NAAJA and CAALAS submissions to the Senate Community Affairs Committee Inquiry referred to above.

Recommendation: This indicator should be removed.

Financial exploitation

Existing mechanisms, such as Centrepay and weekly payments, can provide appropriate protections for people experiencing economic abuse. Compulsory income management should be used as a last resort when other interventions to prevent economic abuse have failed.

The imposition of compulsory income management for this reason will not result in a change to illegal business practices and punishes those who fall victim to them. Further, addressing unauthorised debt practices goes beyond the objects of the legislation. It is the proper jurisdiction of ASIC and the ACCC.

Recommendation: Any reference to a person's involvement with unauthorised debt practices should be removed from the definition of 'financial exploitation'. If a CSW becomes aware that a person is a victim of unauthorised debt practice, they should refer the person to a legal aid service for legal advice.

Failure to undertake reasonable self-care

The imposition of income management on people, who for a range of factors suffer from substance abuse, problem gambling, and or mental health issues, is inappropriate and potentially discriminatory. Income management is unable to address the causes of these 'vulnerabilities' and goes well beyond the objects of the legislation.

Recommendation: Rather than impose income management, if a CSW becomes aware that a person is suffering from any of these vulnerabilities, they should make appropriate referrals and seek supports from agencies, such as financial counsellors, drug and alcohol treatment facilities, comprehensive primary health care clinics and mental health services to assist the person.

People who are homeless or at risk of homelessness

The imposition of compulsory income management onto a person that is homeless will not address the causes of that person's homelessness. There are many different causes of homelessness, such as poverty, the inability to afford adequate housing, the shortage of affordable housing and or family and personal problems.

The rate of homelessness in the Northern Territory is higher than anywhere else in Australia. This is compounded by the shortage of public housing in the Northern Territory.

For example, the current Territory Housing waiting list in Alice Springs is 36 months for a one bedroom dwelling, 31 months for a two bedroom dwelling and 55 months for a three

bedroom dwelling. For applicants who are homeless, at risk of becoming homeless, have serious medical or social issues including financial problems, family violence, sexual assault or a disability, the waiting list for priority housing is 12 to 18 months.

Income management of those who are homeless will not have an impact in the unacceptably long waiting time for Territory Housing properties in the Northern Territory or the causes of homelessness which are largely unrelated to poor financial management.

Lack of detail

Policy Outline 1 is not sufficiently detailed so as to ensure that decisions of CSWs are consistent and transparent.

Whilst we appreciate that the intention of Policy Outline 1 is to allow the CSW a large degree of discretion in order to fully take into account individual circumstances, the manner in which the discretion is to be applied remains opaque. It will be difficult for social security recipients to understand the basis upon which the decision to income manage their payment has been made. This will have affect on social security recipients' ability to appeal such decision and on their ability to actively address their circumstances so as to exit from income management.

We consider that wherever a decision maker is required to use their discretion, the policy outline and/or legislative instruments must provide clear and detailed guidance on the principles and policies to be applied by the decision maker. We consider the following points to require elucidation should the Australian Government persist with its expanded definition of 'vulnerability':

Financial Hardship

Policy Outline 1 fails to detail how a CSW will assess whether a person is "unable to access or engage in activities that meet their priority needs...". It is not clear what kind of behaviour "access or engage in" is meant to encompass, nor what 'activities' Centrelink deems to meet priority needs.

It is entirely inappropriate for Policy Outline 1 to provide no clear guidance to the CSW, or to social security recipients who may be subject to compulsory income management on the basis of their 'vulnerability' as to what factors should or will be taken into account when assessing a person's 'financial hardship'.

Meeting Priority Needs

Step 2 of the decision making principles requires the CSW to consider whether the person is "not meeting their priority needs and/or the priority needs of their children and/or other dependants, now or in the foreseeable future, as a result of experiencing an indicator of vulnerability".

It is unclear what 'not meeting their priority needs' means, as Policy Outline 1 does not go into detail as to what factors the CSW must look to when considering whether a person's priority needs are met.

Similarly, Policy Outline 1 does not detail how a CSW is to assess whether the failure to meet priority needs is a direct result of the individual experiencing an indicator of vulnerability.

A 'type' assisted by income management

Step 3 does not provide any detail as to what 'type' of 'indicators of vulnerability' could be assisted by income management.

It appears that all 'indicators of vulnerability' are considered by the Australian Government to be 'types' of vulnerability' that could be assisted by income management.

In the absence of a restricted definition of vulnerability, the Australian Government must provide clear and sensible guidance as to what it intends for a decision maker to take into account when considering whether "the indicator of vulnerability is of a type that could be assisted by income management". The current lack of clarity leaves the decision maker with an inappropriate amount of discretion and makes it likely that inconsistent and unfair decisions will be made.

Processes and Procedures

Review by CSW

Policy Outline 1 requires the CSW to review the decision to income manage a person identified as 'vulnerable' at the completion of the 12 month period of income management, or sooner at their discretion.

We are concerned that the remoteness of many Aboriginal customers will result in the re-assessment not occurring for a period of time after the 12 month period has elapsed, thus subjecting them to income management for longer than the maximum allowed period.

Recommendations:

- The CSW should be required to reconsider the determination of vulnerability when notified of a change in the person's circumstances.
- The review should be completed **prior** to the conclusion of the 12 month period, to allow those who are determined to no longer be subject income management to be removed from income management at the completion of the 12 month period.
- Policy Outline 1 should provide precise detail as to when the review will occur, with clear timelines for Centrelink to adhere to when instigating and completing the review. If a review is not completed within the 12 month compulsory income management period, the person should automatically be removed from income management.

Decision based on face-to-face interview, telephone interview, or file assessment

The combined Aboriginal organisations are concerned that a CSW is able to make a decision as to whether someone should be compulsorily income managed because of their 'vulnerability' without conducting a face to face interview with the affected individual.

The Australian Government must ensure that Centrelink is adequately funded and enough CSW positions made available – including dedicated remote teams – to ensure that all persons subject to compulsory income management by virtue of this measure are afforded the opportunity of a face-to-face interview with a CSW or, as a last resort, a telephone interview.

Decisions as to a person's 'vulnerability' should not be made via a file review. The complexity of the decision as to whether a person is experiencing a 'type' of vulnerability that would be assisted by income management and whether a person is not meeting their priority needs 'as a result of experiencing an indicator of vulnerability' requires the CSW to speak extensively with the person concerned.

In no circumstances should a person's payment be suspended on the basis of a failure to attend a face to face interview or telephone interview regarding vulnerability. To do so would subvert the objects of the legislation.

Recommendation:

- Policy Outline 1 should be amended to indicate that a face-to-face interview is the preferred and appropriate means of gathering information to make a decision, and if this is impossible, via a telephone interview. Clear guidance should be given as to what steps must be taken by Centrelink to engage with a person before a telephone interview is deemed appropriate.
- CSWs should not be empowered to make a decision as to vulnerability based on a file review except in accordance with the following process:
 - A written notice advising of the requirement for an interview with a social worker combined with appropriate attempts to make phone or personal contact, both at the time the notice is issued and when the notice period expires.
 - Where contact cannot be made, imposition of income management based on an assessment on the file may be made to be for a maximum of six weeks, with the person provided with a notice to that effect and including notice of appeal rights. During the six-week period, Centrelink to have duty to make further genuine efforts to contact the person.
 - Only in the event of sufficient contact attempts having been made, and a further notice issued, should a further 6-week income management period on the basis of a file assessment be put in place.

Request to reconsider decision

Section 123UGA(8) of the Bill enables a person subject to a determination that they are a 'vulnerable welfare payment recipient' to seek reconsideration of their circumstances and the variation or revocation of the determination. However, section 123UGA(9) precludes a person from making such a request if they have already requested a reconsideration during the preceding 90 days. The Bill's Explanatory Memorandum states that the right to request reconsideration exists 'in addition to' review rights under Part 4 of the *Social Security (Administration) Act 1999*.

We are concerned that the reconsideration provision will delay a person's ability to move off income management in the event that their circumstances have changed.

Further, we doubt the necessity of section 123UGA(8) and are concerned that it will detract from social security recipients' awareness of their right of review under Part 4 of the *Social Security (Administration) Act 1999*, will exacerbate the current lack of awareness of appeal rights amongst Aboriginal people, and will lead to the perception that the specific 'reconsideration' rights apply to the exclusion of rights under Part 4.

Recommendations:

- Section 123UGA(9) should be withdrawn, thereby allowing 'vulnerable welfare recipients' to exercise their appeal rights under Part 4 of the *Social Security (Administration) Act 1999* in the usual way.
- We submit that the Bill must be amended to include a right to request reconsideration of a determination under section 123UGA(9) in no way restricts rights of review made under Part 4 of the *Social Security (Administration) Act 1999*, specifically in relation to determinations of 'vulnerability'.

Recurrence of vulnerability

We are concerned about the inclusion of the discretion granted to the CSW to continue to income manage an individual, despite the person being assessed as no longer 'experiencing an indicator of vulnerability' following the review process.

This discretion is based on an assessment by the CSW as to whether the revocation of income management may result in the recurrence of the vulnerability.

This essentially appears to require the CSW to make an assessment of an individual's future needs and circumstances – an impossible task.

We submit that this goes beyond the powers granted under the Bill to compulsorily income manage 'vulnerable' people, and is at odds with the objects of the Bill, which are to "reduce immediate hardship and deprivation...".

Recommendation: The discretion to continue to income manage an individual who is no longer experiencing an 'indicator of vulnerability' should be removed.

POLICY OUTLINE 2

Parental Exemptions: Indicators of Financial Vulnerability

Effect of section 123UGD

Relevantly in relation to 'financial vulnerability', the Bill states at 123UGD(1)(d) that in respect of person with dependent children, an exemption will be available where – at the test time – "there were no indications of financial vulnerability in relation to the person during the 12-month period ending immediately before the test time".

Objective of the instrument

Policy Outline 2 states that the exemption process “requires a person ... to demonstrate that there have been no indications of financial vulnerability during the 12 month period ending immediately before the test time”.

This wording shifts the onus from the Secretary to the person seeking an exemption. The Act does not require a person to ‘**demonstrate**’, it requires the Secretary to be ‘**satisfied**’.

Recommendation: That this wording be amended to accurately reflect the legislative intent.

Decision making principles

The instrument sets out a number of factors as principles for determining that there are no indications of financial vulnerability in a given case.

The failure to define ‘indications of financial vulnerability’ in the instrument is of great concern. The effect of relying in the instrument of the bare words of the Act is that it will be virtually impossible for anyone to obtain an exemption, as the ordinary meaning of ‘indications of financial vulnerability’ is very broad. In addition, the instrument sets a large number of commonplace occurrences (such as declined BasicsCard transactions) that very few people would not have experienced.

Rather than leaving it to the decision maker to determine whether an indicator of financial vulnerability is such that it constitutes an ‘indication of vulnerability’, we say it would be better for the instrument to clearly define ‘financial vulnerability’.

Recommendation: That there be a definition of ‘financial vulnerability’ and that the definition be limited along the lines that:

Financial vulnerability is defined as where a person has significantly and repeatedly failed to meet priority needs of the person and their family to the extent that would be possible on the income available to them.

- In relation to the four dot points under ‘decision making principles’, we strongly recommend that the second and fourth dot point be abandoned, on the basis that these unfairly prejudice against the grant of an exemption.
- The considerations in dot points 2 and 4 would be more appropriately included in the list of indicators used to assess financial vulnerability. These two indicators are better suited to be employed as factors that can be used in assessing whether priority needs have been met, rather than of themselves as indicators of financial vulnerability.

Indicators used to assess financial vulnerability

The introduction to this section states the CSA (**Customer Service Adviser**) “would need to be satisfied that the person has, over the last twelve months, shown no signs of financial vulnerability with regard to the principles set out below”.

This wording is troubling as it includes the word ‘signs’ and misnames the factors used to assess financial vulnerability as ‘principles’.

Recommendation:

- That this paragraph should rather state words to the effect that the factors listed may be used in determination whether there are indications of financial vulnerability.
- That there be a clear statement that the list of factors is not exhaustive and that whether a factor is indicative of financial vulnerability depends on the context.
- That there be a clear statement that the factors listed are not necessarily determinative as indicators of financial vulnerability, rather they are matters to be taken into consideration by the decision-maker in determining whether a person is or is not financially vulnerable.

Determining 'persons with dependent children'

The draft instrument does not explain how, or which one of two or more parents/carers will be determined to be the person with dependent children for the purposes of s 123UGD.

Section 123UGD(4) provides "in this section, dependent child means a dependent child who is a school age child or younger" and refers the reader to section 5 of the *Social Security Act 1991* (the **Social Security Act**).

Section 123UGE (1) of the Act provides that "a child can be a dependent child of only one person at a time".

Section 123UGE (2) of the Act provides that "if the Secretary is satisfied that, but for subsection (1), a child would be a dependent of 2 or more persons, the Secretary must determine in relation to which of those persons the child is a dependent child".

Recommendation:

- The instrument needs to detail on what basis and by what means the Secretary will determine which person a child is dependent upon.
- We note that this determination will be a reviewable decision, and that people subject to determination under s 123UGE need to be advised of their rights of review in relation to such a determination.

Decision making by Centrelink Customer Service Advisers

Exemption decisions are to be made by CSAs. CSAs will be required to exercise a broad discretion in determining whether customers are 'financially vulnerable' for the purposes of the legislation. As well as making the changes to the policy outline set out below, FAHCSIA must ensure that comprehensive training is delivered to CSAs regarding making this decision, including financial and budgeting analysis skills. It is important that this training acknowledge that most people on social security benefits face a level of financial hardship due to the low level of payments. This hardship should not alone, be considered determinative of financial vulnerability.

Indicators:

The breadth and detail of the indicators are of concern:

- The large number of questions makes the process of applying for an exemption time consuming and complicated. This, combined with the intrusive nature of the questioning, is likely to deter people from applying for an exemption.
- The rationale for the inclusion of some of the factors is unclear and it is not clear whether they are intended to be an indicator of financial vulnerability or not. It is also not clear what weight a CSA will give to each of the factors.
- It is well documented that it is difficult to survive solely on regular social security benefits.⁵ Many social security recipients use advances and urgent payments from Centrelink to manage the payment of large expenses, such as car registration or medical or dental treatment. The use of urgent payments and advances should not be seen as an indicator of an inability to manage funds.
- Use of Centrepay:
 - We query the relevance of whether a person has enquired about Centrepay for an unregistered third party organisation. It is difficult to see how this could be an indication of financial vulnerability.
- Income Management Allocations:
 - Many Aboriginal people are highly mobile, moving between communities to fulfill family and community obligations. Often movement between communities will mean regular changes to income management allocations.
 - This section asks 'will the customer be able to manage their money to meet their priority needs without income management?' This is a complex question that goes beyond the question of whether a person is financially vulnerable.
- Money Management Courses:
 - Making money management courses available to income managed people in the remote Northern Territory will require significant additional investment. Currently services are very limited.
- Demonstrated Budget and Savings:
 - This places a higher burden on income managed people in relation to management of finances than that expected from the rest of the population.
- BasicsCard declined transactions:

⁵ For further information, see Australian Council of Social Service, "Who is missing out? Hardship among low income Australians", *ACOSS Info Paper* (December 2008).

- Since the introduction of BasicsCard, income managed Centrelink customers have reported regular technical problems with the system which have led to BasicsCard transactions being declined.
 - The Closing the Gap reports have detailed an increase in declined BasicsCard transactions – from 17% to 29.3%.⁶ The majority of the unsuccessful transactions were due to insufficient funds on the card.
 - Customers also find it difficult to check their BasicsCard balance. While there is a freecall number, it is not free from mobile telephones. Customers are unable to get a balance at an ATM or on their transaction receipt.
 - The above issues cause the majority of declined transactions. Without an efficient and easy-to-access balance checking system such as that available with mainstream keycards, it is unfair to expect that customers will be able to consistently keep track of the money in their BasicsCard and never have transactions declined.
- Labour Force Participation:
 - It is difficult to see how this is of itself relevant to financial vulnerability. This indicator will unfairly disadvantage remote clients who do not have access to a functional labour market.

Processes and Procedures:

Policy Outline 2 provides that an exemption determination will apply for 12 months. This cap on the length of the determination is unnecessary and demeaning. The policy settings should encourage and reward 'socially responsible behaviour' and financial independence and capability. Limiting the life of the determination is an automatic vote of no confidence in a person's ability to manage their money. This a policy setting that entrenches a view of all Aboriginal people as intrinsically incapable of managing their money and caring for their children and sets the tone of income management being forever the norm, rather than the exception.

Recommendation: A preferable approach is that the determination is of indefinite duration, with Centrelink able to have recourse to the vulnerable welfare payment recipient power in the event that a substantial and ongoing change in circumstances relating the person's ability to meet their priority needs comes to light.

There is provision for referral to a CSW if a CSA notes a person's circumstances have changed. The policy outline does not set out any consequences of failing to attend a social worker interview.

Recommendation: It is unacceptable and contrary to the objects of the Act to suspend payment to enforce attendance at an interview with Centrelink.

POLICY OUTLINE 3

⁶ *Closing the Gap Report*, p 57, *Closing the Gap Report July to December 2009*, p 33

Parental Exemptions – Parents with children of compulsory school age and under compulsory school age.

123UGD Exempt welfare payment recipient—persons with dependent children

This section should be read with the objects provision in section 123TB. This section is referable to the object of encouraging "socially responsible behaviour, including in relation to the care and education of children".

The activities listed in this instrument go beyond encouragement of socially responsible behaviour in relation to children. Rather, they place onerous responsibilities on parents which reflect a particular view about the best way to care for children.

We are further concerned that the types of activities that allow a parent to apply for an exemption from income management are simply not provided in the majority of remote Aboriginal communities and are highly limited in regional centres in the Northern Territory. In effect, the drafting of the policy outlines will operate to prevent persons with dependent children from accessing an exemption in circumstances where the 'activities' detailed are not available or appropriate, and particularly in remote Aboriginal communities. This is unacceptable.

School-aged children

The instrument states that the decision making principles in relation to each compulsory school aged child are:

- enrolment at school; and
- no more than five unauthorised absences for each of the previous two school terms; or
- approval to provide home based schooling, in accordance with the relevant state or territory legislation; or
- participation in an alternative activity, as set out in a legislative instrument.

The policy outline interchangeably uses 'authorized' and 'unexplained'.

Section 123UGD(1)(b)(i) requires no more than 5 'unexplained' absences rather than 'unauthorised' absences as provided for in the instrument. As currently drafted, we consider it goes beyond the terms of the legislation. We consider that the use of 'unexplained' implies that Centrelink officers will give customers an opportunity to explain any absences over the limit set out in the legislation.

Recommendation:

- Reflecting the legislation, the wording in the policy outline must be restricted to 'unexplained'.
- The provisions in the instrument relating to evidence of school attendance should be removed. While a school report should be used as evidence of the number of absences, the use of the word 'unexplained' in the legislation means that it should not be taken as evidence of the number of unexplained absences.

Children under school age:

Number and type of activities required:

The instrument provides for:

- children under 36 months, at least two activities from Group 1;
- children between 36 months and 48 months, at least two activities from Group 1 and evidence that the child or parent has, where services are available, engaged in an activity listed in Group 2;
- children aged 48 months and over (below school age), in general, two activities from Group 1 and regular participation in one activity from Group 2

Parents whose children are over 30 months at the introduction of this scheme could be disadvantaged if they have not undergone the relevant health checks set out in Group 1. If their child does not require any therapy as set out in the third option in Group 1 there is no way for a parent to get an exemption. A more general requirement that a health clinic certify that a customer is meeting their child's medical needs may be more appropriate.

The conditions for children aged 48 months and over are unclear. The instrument uses the words "in general" but does not set out what would be considered in making a decision to depart from the "general rule"

It is apparent that the bureaucrats who drafted these health-related requirements are ignorant of the circumstances of primary health care service delivery to Aboriginal communities in the Northern Territory, particularly with regard to the current limitations of the health system itself.

Group 1: Health

The three Group 1 health activities required for parental exemption under Policy Outline 3 present an unreasonable and mostly unobtainable level of substantiation from parents and include two activities that are inappropriate for the purpose of assessing whether parents are demonstrating responsible parenting.

Immunisation:⁷

This is broadly a reasonable and obtainable requirement; however, there are significant delays in updating the ACIR that would need to be taken into account. This results from the fact that immunisation data first goes from the clinic to the NT Department for Health and Families to update the NT's database, and is then forwarded to Canberra where the ACIR is updated separately.

As an example, past experience with the linking of Centrelink payments to parents triggered by the updating of ACIR records resulted in significant delays in payments being made. CSAs would need to manually check immunisation details with clinics in cases where the ACIR has not yet been updated or else risk unfairly disqualifying compliant parents from accessing an exemption on this activity.

Child health checks⁸:

⁷ Age appropriate level of immunisation as defined by the Australian Childhood Immunisation Register (with some exemption situations also listed in the exposure draft)

⁸ Regular child health checks as defined by the National Health and Medical Research Council of Australia (at: 1-4 weeks (at the first home visit), 6 weeks, 6-9 months, 18 months, 24 and 30 months. This includes visits to health clinics, maternal and child health services, doctors and specialists. Some discretion in relation to timing of health checks may be appropriate in locations where services are difficult to access or unavailable)

There is a lack of standard practices in the provision of child health checks by Aboriginal health services in the NT. The NH&MRC guidelines are not universally used in the NT and should not be used as the guideline for this activity. Standard practices differ between NT Department of Health and Families clinics and Aboriginal community-controlled clinics and between different individual clinics depending on clinical decisions about child health check periodicity and other clinical and capacity considerations.

Child health checks are generally carried out through a recall process where parents are notified by health clinics when a health check is due. Where, for essentially clinical or capacity reasons, there has been no recall notification it is unreasonable to blame the parent for a health check not having been carried out.

Shortages or absences of doctors at remote clinics, which is a common occurrence, means that it is often impossible to carry out standard child health checks as these cannot be completed without a doctor.

As an example, one community in the Northern Territory has only one doctor to service 500 children under 5 and 1500 children under 15 years of age. Even if all that doctor's time was spent solely on conducting child health checks, it would still be impossible to complete more than a fraction of the required checks. Regardless, more urgent clinical needs must take precedence. Remote clinics are often without a resident doctor for significant periods of time due to difficulties in recruitment and retention.

Research has also questioned the benefit of child health checks in the context of the Northern Territory Emergency Response, where existing systems are not providing for adequate follow-up of identified medical and social problems for children living in remote Aboriginal communities.⁹ This in turn raises questions about whether documenting child health checks will necessarily help prove that people are parenting well.

Allied health therapies¹⁰

As the vast majority of children will not require such service most parents will not be able to satisfy this activity test to gain an exemption. It is not appropriate to include as a test an activity that the majority of children will not require. Additionally, if a child does require such services there is often a lack of allied health professionals in remote communities. Consequently, very few parents will be able to demonstrate compliance with this activity.

Inappropriate role for health professionals

In addition to the practical difficulties of linking health-related activities to welfare payments, there are also ethical concerns in placing health professionals in the role of providing documentation that may directly affect whether a client is subject to income management or not. This presents a potential conflict that may adversely impact on the health professional/client relationship. It is not a health professional's role to be doing this.

⁹ Bailie, RS et al. "Delivery of child health services in Indigenous communities: implications for the Federal Government's emergency intervention in the Northern Territory", *Medical Journal of Australia*. 2008 May 19;188(10):615-8.

¹⁰ Participation in a program of speech therapy, occupational therapy, physical therapy or other approved therapy, as evidenced by documentation from an allied health professional (participation in this case means reasonable participation, as assessed by the allied health professional)

In summary, the requirement for at least two activities from Group 1 activities will be impossible for the vast majority of Aboriginal parents to comply with and hence their request for an exemption will fail on this hurdle alone – regardless of whether they are responsible parents or not.

Only one of the Group 1 activities, an immunisation record, could be seen as a reasonable activity for the purposes of an exemption process. In addition, the substantiation requirements are likely to result in a significant additional burden on already over-burdened Aboriginal primary health care services – whether community controlled or run by the Department of Health and Families – that will detract from the capacity of the health services to carry out core clinical responsibilities.

Income management is an inappropriate and inefficient back-door compliance measure for ensuring responsible parenting and that child health needs are met. A better approach would be to ensure that all health services are adequately resourced with the capacity to constructively engage parents in the health of their children.

Group 2 - Engagement:

Policy Outline 3 provides that attendance at approved childcare is required to be for a minimum of 15 hours for at least 13 weeks over a 26 week period. The requirement of 15 hours a week means that children will have to be in child care for one and a half days per week. This is a large amount of time compared to other options within this Group, such as “structured socialisation activity” which has no time requirement.

Additionally, this could impose a significant expense on Centrelink customers, if indeed they are even able to access this level of child care in their community. Many remote communities do not have access to child care centres or structured socialization activities.

Recommendation: This level should be reduced to at maximum, 8 hours a week. Assessment of the exemption should take into consideration whether the person is able to access the activity in their community at the level required by Policy Outline 3.

Provision of evidence of activities

Telephone as a last resort:

The instrument provides that Centrelink will only confirm participation by phone as a last resort. It is likely that remote clients will be applying for exemptions through the Indigenous Call Centre. It will be difficult to provide the relevant documentation by fax. The process could be made simpler by giving Centrelink officers the flexibility to contact service providers.

Recommendation: This part of the instrument should be removed.

Evidence of health checks:

Further problems arise with the ability of parents to substantiate that health checks have been carried out. The production of evidence will prove difficult for people living in

remote communities, who have limited access to telephones, facsimile, the internet and organisations that will assist to obtain this information and provide it to Centrelink.

Policy Outline 3 requires parents to substantiate health checks via the following:

Evidence of health checks, or visits to medical providers, could be provided by:

- a doctor's certificate with the child's name and the date of appointment; or
- evidence from the Centrelink database about a recent doctor's visit, in the context of a claim for Carer Allowance or Carer Payment; or
- a copy of the customer's Medicare record, showing that the child had attended a medical appointment. Medicare customers are already able to request this information from Medicare."

These requirements are not realistic or reasonable for many Aboriginal parents, particularly in regional and remote areas.

There is often not a doctor available to fill out a medical certificate or even when there is, they are likely to be already over-burdened by other clinical priorities. To ask health service staff to complete, in some cases retrospectively, medical certificates for all children who have had attendance at the clinic for health checks or other acute presentations, is a significant burden that will also take time away from clinical care.

It will also be difficult for families that have moved between health service delivery zones to track down their health check records as there is no centralisation of such records. The e-health initiative, which is still under development, is only subscribed to by a minority of patients and, regardless, e-health records can only be used for medical purposes and not for administrative or other purposes.

Evidence from a Centrelink database about recent doctor's visits in relation to a Carer Payment or Carer Allowance should be readily accessible, however, such payments are only supplementary payments for children with disabilities or a medical condition, and therefore will only apply to a small minority of parents.

Medicare records are not readily available. It takes about three months for a doctor to obtain a reply to a request for a summary of the Medicare claims that have been paid out to them and parents will face similar delays in getting information back from Medicare.

In addition, those who don't have English as a first language, usually ask health centre staff to help them with these sorts of queries. Where health centre staff don't have (or make) time to help them, a parent may be unable to obtain the required records. Where such assistance can be provided it will be at the expense of precious clinical time.

Approximately half of the Aboriginal health services in the NT are run by the Department of Health and Families (DHF). However, Medicare is often not claimed in clinics run by DHF. Therefore Medicare records will not be an accurate reflection of a child's health record and so will not be available as a substantiation method in many instances.

A further problem concerns the lack of expertise and capacity of Centrelink CSAs (CSAs) to adequately assess the basis upon which a particular parent is not able to substantiate child health checks.

It seems unlikely that a CSA would check whether there was a doctor available at the relevant health service at the time a health check should have occurred or whether a particular clinic had, because of capacity limitations, not recalled parents for child health checks because there wasn't the ability to carry them out.

Parents themselves may not be aware of the clinical and capacity issues that may have resulted in child health checks not occurring and therefore such information will not emerge during interviews with CSAs.

Without detailed and persistent investigation by the CSA, many parents will likely be deemed to have failed this test through no fault of their own.

POLICY OUTLINE 5

Qualification for matched savings scheme (income management) payments; and Approved Money Management Course s 1061WG(3)

FaCHSIA has not indicated whether persons who are income managed will be able to attend a course in their home community. If FaCHSIA does not intend on delivering courses on a regular basis in each remote community, Aboriginal people living in remote areas will not be able to access the matched saving scheme in the same way that a person living in Alice Springs or Darwin would do so.

The qualification for the matched savings scheme is so onerous and complicated that we consider that a very limited number of people will be able to satisfy the current requirements and thus be eligible for the payment.

The requirement that the final six weeks of the qualifying savings period may not constitute more than 50% of the persons total qualifying savings amount requires a high degree of numeracy, financial literacy and budgeting skills. We consider that this qualification defeats the purpose of the matched savings scheme, which is to encourage people achieve a savings goal.

The production of evidence of the savings patterns will also prove difficult for people living in remote communities, who have limited access to telephones, facsimile, the internet and organisations that will assist to obtain this information and provide it to Centrelink.