

EXPLANATORY STATEMENT

Social Security (Administration) — Queensland Commission (Family Responsibilities Commission) Specification 2015

The *Social Security (Administration) — Queensland Commission (Family Responsibilities Commission) Specification 2015* (the **Specification**) is made under paragraph (b) of the definition of **Queensland Commission** in section 123TC of the *Social Security (Administration) Act 1999* (the Social Security Administration Act).

Purpose and operation

The purpose of the Specification is to continue the specification of the Family Responsibilities Commission (the **Commission**), established by section 9 of the *Family Responsibilities Commission Act 2008* (Qld) (the **FRC Act**), for the purposes of paragraph (b) of the definition of Queensland Commission in section 123TC of the Social Security Administration Act.

Section 123TC of the Social Security Administration Act defines the Queensland Commission as a body or agency that is established by a law of Queensland and specified in a legislative instrument made by the Minister for the purposes of paragraph (b) of the definition.

The effect of the Specification is that a notice given to the **Secretary** (as defined in subsection 23(1) of the *Social Security Act 1991*) by the Commission that requires that a person be subject to the income management regime under section 123UF (in Part 3B) of the Social Security Administration Act will be recognised as a notice given by the Queensland Commission. A person is subject to the income management regime under Part 3B of the Social Security Administration Act if, amongst other things, the Queensland Commission has given the Secretary a notice requiring that the person be subject to the income management regime.

The continuation of income management as a key element of Cape York Welfare Reform, will continue to assist in stabilising people's circumstances and fostering behavioural change, particularly in the areas of school attendance, parental responsibility and increasing individual responsibility.

The Specification commences immediately before 1 January 2016 when the Social Security (Administration) - Queensland Commission (Family Responsibilities Commission) Specification 2014 ceases. This Specification continues income management under section 123UF from 1 January 2016.

The Specification is a legislative instrument.

Consultation

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

To ensure the initiative continues to meet the needs of local people, the Queensland Government led a process of consultation with Cape York communities, in partnership with Australian Government staff and representatives of the Cape York Institute, on the proposed extension. This is consistent with the approach taken in 2007 before the initiative started and each extension since then.

The consultation included meetings in all four participating communities and meetings with key government and non-government stakeholders.

Regulatory Impact Analysis

The Specification is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1

This section provides how the Specification is to be cited, that is, as the *Social Security (Administration) - Queensland Commission (Family Responsibilities Commission) Specification 2015*.

Section 2

This section specifies the Queensland Commission as the Family Responsibilities Commission established under section 9 of the *Family Responsibilities Commission Act 2008* (Qld).

Section 3

This section provides for the commencement of the Specification immediately before 1 January 2016.

Section 4

This section revokes the *Social Security (Administration) - Queensland Commission (Family Responsibilities Commission) Specification 2012*, which ceased to operate before 1 January 2014.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights
(Parliamentary Scrutiny) Act 2011*

This Legislative Instrument is the *Social Security (Administration) - Queensland Commission (Family Responsibilities Commission) Specification 2015*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Legislative Instrument

Amendments recently passed by Parliament, together with this Specification, extends the timeframe for income management under section 123UF of the *Social Security (Administration) Act 1999* (the **Social Security Administration Act**) to 1 January 2016.

The purpose of the Specification is to continue the specification of the Family Responsibilities Commission (the **Commission**), established by section 9 of the *Family Responsibilities Commission Act 2008* (Qld) (the **FRC Act**), for the purposes of paragraph (b) of the definition of Queensland Commission in section 123TC of the *Social Security Administration Act*.

Section 123TC of the Act defines the Queensland Commission as a body or agency that is established by a law of Queensland and specified in a legislative instrument made by the Minister for the purposes of paragraph (b) of the definition.

The effect of the Specification is that a notice given to the **Secretary** (as defined in subsection 23(1) of the *Social Security Act 1991*) by the Commission that requires that a person be subject to the income management regime under section 123UF (in Part 3B) of the *Social Security Administration Act* will be recognised as a notice given by the Queensland Commission. A person is subject to the income management regime under Part 3B of the *Social Security Administration Act* if, amongst other things, the Queensland Commission has given the Secretary a notice requiring that the person be subject to the income management regime.

Human rights implications

Eliminating racial discrimination

This specification engages Article 2(1) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which:

‘...imposes an obligation on State parties to undertake to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races...’¹

Equality before the law

This Specification also engages Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which states:

‘...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’²

There is no incompatibility with the rights engaged as the circumstances meet the test for legitimate differential treatment under international law.

Legitimate differential treatment

The objective of Cape York Welfare Reform is aimed at supporting the restoration of socially responsible standards of behaviour and assisting community members to resume and maintain primary responsibility for the wellbeing of their community and the individuals and families within their community. This objective is considered sufficiently important to justify differential treatment on the basis of a prohibited ground.

An independent Evaluation of Cape York Welfare Reform, released in March 2013, indicates that the initiative has had a positive impact in participating communities, with increased personal responsibility and positive behavioural changes such as increased school attendance, increased commitment to education by parents, and greater support for local Indigenous authority and leadership.

Moreover, results of consultations conducted to date have established support for the Welfare Reforms in the four participating Cape York communities.

The Family Responsibilities Commission (FRC), a central plank of the reforms, operates through a conferencing model. In practice, this means an individual will attend a number of conferences with Local Commissioners who are respected local Indigenous elders in the community. At the conferences, options for support are discussed, including referrals to existing support services, prior to any income management direction being made by the FRC.

¹ International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1)

² International Covenant on Civil and Political Rights, Article 26.

The FRC considers appropriate alternatives in conjunction with the individual, with income management only being used as a final measure.

The results of the reviews and consultations to date demonstrate that the differential treatment of members of the four Cape York communities is having a positive impact on individuals, families and the broader communities.

Conclusion

The Specification is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Christian Porter MP, Minister for Social Services