

Review of Centrelink Income Management Decisions in the Northern Territory:

Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions

DEPARTMENT OF HUMAN SERVICES: CENTRELINK
AND DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY
SERVICES AND INDIGENOUS AFFAIRS

June 2012

Report by the Acting Commonwealth Ombudsman,
Alison Larkins, under the *Ombudsman Act 1976*

REPORT NO. **04|2012**

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ISBN 978-0-9807966-4-3

Date of publication: June 2012

Publisher: Commonwealth Ombudsman, Canberra Australia

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EXECUTIVE SUMMARY

Income Management (IM) has applied in the Northern Territory (NT) since 2007. IM is designed to ensure that income support payments are used to pay for necessary goods and services rather than discretionary items and activities. Initially targeting Indigenous Australians living in remote and very remote communities, it has been applied across the entire NT, depending on a person's payment circumstances, since mid-2010.

This report details reviews of two areas of Centrelink's IM decision making, namely:

- a) decisions to refuse to exempt people from IM because Centrelink has formed the view that there have been indications of financial vulnerability in the past 12 months
- b) decisions to apply IM to people because Centrelink social workers have assessed those people as vulnerable welfare payment recipients (VWPRs).

IM decisions have far-reaching consequences for affected people, who are often geographically remote or isolated and among the least empowered to pursue review rights or complaints mechanisms. They may also be disadvantaged by language, literacy and knowledge barriers. To safeguard the rights of these people, Centrelink's IM decisions must comply with all legislative requirements, be supported by sound evidence and rigorous assessment, and meet policy objectives.

We reviewed IM decisions made by Centrelink between August 2010 and March 2011, finding a need for significant improvement in the two areas described above. Some of the decisions we reviewed did not address all of the required legislative criteria and lacked a sound evidence base. In addition, the letters designed to explain decisions were inadequate and unclear and failed to inform Centrelink customers of their review rights.

Part way through our investigation, we wrote to the Department of Human Services (DHS) (herein referred to as Centrelink)¹ and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) detailing our preliminary concern that decisions to refuse IM exemptions because of financial vulnerability might not comply with the legislation. The agencies were comprehensive in their response. Centrelink established a Taskforce to examine the issues and reported its findings and recommendations to our office in November 2011.

While we commend the agencies for their work, a range of issues arising from the decisions we reviewed were not addressed by the Taskforce and remained of concern to this office. We made recommendations accordingly. The agencies responded to our recommendations, providing details of the significant steps already taken to improve the administration of IM. These changes addressed a number of the problems evident in the decisions we reviewed. Other solutions are still being implemented. We will ask the agencies for an update of their progress in response to our recommendations, including examining revised decision-making processes, three months after this report is published.

Part 1 of this report sets out the background to the current IM regime and the methodology underpinning our review. Part 2 details our assessment of financial vulnerability decision making; outlines the findings of the Taskforce in relation to those decisions; and makes recommendations for further improvements to financial vulnerability decision making. Our concerns and recommendations about VWPR

¹ When we commenced this investigation, the responsible agency was Centrelink. Subsequently, Centrelink was incorporated into the Department of Human Services (DHS). For clarity, we will continue to refer to the agency as Centrelink throughout this report. Reference to Centrelink should be read as reference to DHS.

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decisions, as well the views of the Taskforce, are set out in Part 3 of this report. Part 4 discusses problems with Centrelink's letters to customers affected by both types of decisions and includes the Taskforce's views on this issue. Part 5 summarises our recommendations and Part 6 details Centrelink's and FaHCSIA's responses to our recommendations. Appendix 1 is the complete list of the Taskforce's recommendations.

PART 1 — INTRODUCTION

Background

1.1 Income Management (IM) enables Centrelink to retain and manage at least 50% of a person's income support payments. The intention is to ensure that the priority needs of people, particularly children, are met through the proper expenditure of income support money.² The managed funds can only be allocated to priority goods and services, such as housing, clothing, food, utilities, education and health care. Managed funds cannot be used to purchase prohibited goods such as alcohol, gambling products, tobacco or pornography. The remaining portion of a person's income support is available for that person to use as they wish.

1.2 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is responsible for IM policy, while Centrelink, as part of the Department of Human Services (DHS), is responsible for IM service delivery. The legislative framework for IM requires agencies to have regard to principles of administration, including: the special needs of disadvantaged groups in the community; the need to be responsive to the interests of Aboriginal and Torres Strait Islander communities and to cultural and linguistic diversity; the importance of the system of review of decisions under social security law; and the need to ensure that social security recipients have adequate information regarding the system of review of decisions under that law.³

1.3 IM was introduced into the Northern Territory (NT) as part of the 2007 Northern Territory Emergency Response (NTER).⁴ While IM in the NT was initially limited to 73 Indigenous communities, associated outstations and certain town camp areas,⁵ in mid-2010 it was progressively expanded across the whole of the NT, including Alice Springs and Darwin.⁶ Since mid-2010, IM in the NT has targeted specific groups of Centrelink customers considered to be at high risk of social isolation and disengagement, poor financial literacy and participation in 'risky behaviours'.⁷ When we commenced this investigation, more than 16,500 people were subject to new IM; approximately 12,000 were on compulsory IM.⁸ Broadly, under the current NT program, a social security recipient who usually lives in the NT will come within the scope of IM if they fall into one of the following categories of Centrelink customers:

- Disengaged youth—customers between 15 and 24 years old who have been in receipt of one of the following payments for three of the last six months:
 - youth allowance
 - newstart allowance
 - special benefit
 - parenting payment

² See s 123TB of the *Social Security (Administration) Act 1999*.

³ Sections 8(b) to (e) of the *Social Security (Administration) Act 1991*.

⁴ The NTER was announced by the Australian Government on 21 June 2007 and legislation in support of it was passed in August 2007.

⁵ Initially, 73 Indigenous communities were specifically covered by the measures set out in the *Northern Territory National Emergency Response Act 2007*.

⁶ The new IM model followed the passing of the *Social Security and Other Legislation (Welfare Reform and Reinstatement of the Racial Discrimination Act) Amendment Act 2010*. Under s 123TFA of the *Social Security (Administration) Act 1999*, the Minister may declare any specified state, territory or area to be a declared an income management area.

⁷ http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.1/ssguide-11.1.1/ssguide-11.1.1.20.html.

⁸ FaHCSIA, NTER situation report as at 31 March 2011.

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- Long-term welfare payment recipient—customers aged 25 years or more who have been in receipt of one of the following payments for more than one year of the last two years:
 - youth allowance
 - newstart allowance
 - special benefit
 - parenting payment
- Vulnerable welfare payment recipient (VWPR)—anyone a Centrelink social worker has assessed to be a VWPR
- customers subject to the Child Protection IM measure—customers who are referred for IM by NT child protection authorities
- Voluntary Income Management (VIM) customers—people who volunteer for IM.

1.4 Centrelink manages 50% of the income support of those people included in the disengaged youth, long-term welfare payment, VWPR and VIM categories. Those subject to the Child Protection IM measure have 70% of their payments managed. In all cases, 100% of any lump sums or advance payments are managed.

1.5 People in the disengaged youth or long-term welfare payment recipient categories can ask Centrelink to exempt them from IM. To be exempted from IM, people in these categories who do not have dependent children must satisfy Centrelink that they are undertaking certain activities such as full-time study, or they have worked a minimum of 15 hours or more per week for at least six of the last 12 months and been paid at least the minimum wage.

1.6 People with at least one dependent child must also satisfy Centrelink that:

- there were no indications of financial vulnerability in the 12 months before they applied for an exemption (this is referred to as the financial vulnerability (FV) test)
- each school-aged child is enrolled in, and has attended, school for the past two terms (with no more than five unexplained absences in a school term)
- each child under school age participates in age-appropriate childhood services and activities.

1.7 This report focuses on two types of IM decisions in the NT:

- decisions to refuse to exempt people from IM who are in the disengaged youth or long-term welfare payment recipient categories, and who have dependent children, on the basis that they do not pass the FV test (FV decisions)
- decisions to subject people to IM because a social worker has determined the person comes within the VWPR category (VWPR decisions).

1.8 We selected these types of decisions for investigation after an NT community legal service brought to our attention examples of problematic decisions. These examples reinforced concerns identified in the course of observations by this office during the rollout of new IM in 2010.

1.9 It should be noted that under the 2011–12 Budget, the VWPR, VIM and Child Protection IM measures will be extended to five new locations on 1 July 2012.⁹

Scope and methodology of Investigation

1.10 In February 2011, the Ombudsman commenced an own motion investigation into Centrelink’s decision-making processes and reasons in relation to these two types of IM decisions.¹⁰ In March 2011, we asked Centrelink how many people had been the subject of Centrelink decisions to refuse an exemption because of the FV test or to apply IM under the VWPR measure. We were given the details for 171 customers who had been refused an exemption because of the FV test, which we understand was out of more than 1,000 people who applied. Centrelink also provided the details of 237 customers who had IM applied to them under the VWPR measure. Of these 408 customers who were subject to IM, 383 (93%) identified as Indigenous.¹¹

1.11 We selected a 25% sample of each type of decision (40 affected by FV decisions and 59 affected by VWPR decisions) and requested from Centrelink all relevant records pertaining to these cases, including correspondence and decisions made after internal review or reconsideration. In July, Centrelink started providing the records; final material was received by this office in late September 2011.

1.12 The decisions in our sample were all made between August 2010 and March 2011. We reviewed the records of these decisions using an assessment tool that focused on how the FV test or VWPR decision was made, whether legislative and policy requirements had been met, and the quality of decision letters. We did not assess whether the outcome of the decision was correct or preferable, other than to the extent that the outcome may have been adversely influenced by problematic decision-making processes.

1.13 In assessing the decision records, we also had regard to the Administrative Review Council’s Best Practice Guides¹² and general administrative principles. Key among these are that evidence and decisions must be carefully and fully documented, all relevant considerations must be addressed (including mandatory considerations listed in legislation) and irrelevant considerations must not be taken into account.

1.14 It should be noted that we did not investigate Centrelink’s decisions about the stage of the exemption process for people with dependent children that follows the FV test. That is, whether the child or children participate in certain activities, depending on their age, such as kindergarten and regular school attendance. This is a matter that the Australian National Audit Office (ANAO) may consider in its upcoming audit of the management of IM.¹³

⁹ The new locations are Bankstown, New South Wales; Logan, Queensland; Rockhampton, Queensland; Playford, South Australia; Shepparton, Victoria. See <http://www.humanservices.gov.au/corporate/publications-and-resources/budget/measure/payments-and-services/ptf6a>.

¹⁰ Pursuant to s 5(1)(b) of the *Ombudsman Act 1976*.

¹¹ Of the VWPR group, 222 identified as Indigenous, seven identified as non-Indigenous and three did not indicate. Of the financial vulnerability exemption refusal group, 161 identified as Indigenous and 10 identified as non-Indigenous.

¹² See, for example, *Best Practice Guide 1: Decision Making: Lawfulness* (August 2007), *Best Practice Guide 3: Evidence, Facts and Findings* (August 2007) and *Best Practice Guide 5: Decision Making: Accountability* (August 2007) at http://www.ag.gov.au/agd/WWW/archome.nsf/Page/Publications_Reports_Other_Documents.

¹³ <http://www.anao.gov.au/Publications/Audits-in-Progress/2012/Winter/Centrelinks-Administration-of-Income-Management-Services>.

The Taskforce and subsequent improvements in administration

1.15 We reviewed the FV decisions first. In September 2011, we wrote to Centrelink and FaHCSIA about our preliminary concerns that these decisions might not comply with the legislation. We also informed the agencies that we were concerned about:

- failures to include review rights in decision letters
- insufficient reasons for decisions in decision letters
- incorrect or inaccurate information in letters
- inadequate communication, including the failure to use interpreters
- requests for exemption not actioned
- failures to commence reviews, particularly during the period when Centrelink was under instructions from FaHCSIA that FV exemption refusal decisions operated for 12 months.

1.16 Both agencies responded in September 2011 and Centrelink established a Taskforce (the Taskforce) to review all of the FV refusal decisions and 25% of the VWPR decisions made between August 2010 and September 2011. The Taskforce was established with the following Terms of Reference:

1. Review all vulnerability IM decisions made since 9 August 2010 to ensure they meet administrative decision-making standards or whether they may be susceptible to a finding of invalidity by a court.
2. Review all vulnerability decision-making tools and processes to ensure they reflect the legislative and policy requirements and assist in assessing and determining customer vulnerability.
3. Review and provide advice regarding the training provided and training packages to vulnerability decision makers.
4. Provide advice on a quality framework to be adopted for IM decisions.
5. Provide advice to the National Manager, Deduction and Confirmation Services Branch (NM, D&CSB), for input into future strategic directions for IM.
6. Provide advice and suggestions, as appropriate to NM, D&CSB and Service Leader Northern Australia regarding ongoing servicing of IM in the NT.

1.17 The Taskforce reviewed 167 FV decisions and a sample of 79 social worker VWPR decision reports.¹⁴ Centrelink provided the Taskforce's report to our office in November 2011. The Taskforce's recommendations are at Appendix 1. It made 13 recommendations concerning FV decisions and eight recommendations about VWPR decisions. These include four recommendations about letters.

¹⁴ Centrelink referred 16 FV decisions back to the decision-making team. Of these, five resulted in exemptions, two were reassessed but affirmed, three customers advised they would reapply for exemption at another time, two were out-of-scope due to changed circumstances, three customers did not want to seek exemption and one very remote customer had not engaged with the team. Sixteen VWPR decisions were referred back to the decision-making team. Of these, nine social worker reports that were incomplete were subsequently completed, three reports that had insufficient evidence were reassessed and finalised, three cases required pre-exit assessment as the VWPR notice had expired and one report was confirmed. More details about the Taskforce's review and findings are at paragraph 2.40.

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1.18 We commend Centrelink for its decision to set up the Taskforce. It was an expeditious response to our concerns that demonstrates a commitment to improving services to the public and ensuring these sensitive decisions give effect to the legislation underpinning them. The Taskforce's report shows that it gave careful consideration to a range of issues involved in the decision-making process, from policy guidance to systems support and training. We also note that the Taskforce conducted interviews with staff.

1.19 The agencies continued to work on improving IM administration while our investigation continued. As a result of the Taskforce review of FV decisions, Centrelink recontacted each of the 167 customers to inform them of their review rights. It also engaged with community legal services about the action it was taking. In December 2011, a Centrelink team reviewed all of the VWPR decisions in place at the time to ensure that all mandatory considerations were documented, decisions were supported by evidence and the policy intent of VWPR IM had been met. The review involved 137 cases that comprised 268 reports.¹⁵ The lessons from that review have led to the implementation of quality standards, use of a quality decision-making checklist and a change in the process whereby a senior social worker is required to review VWPR decisions before they are implemented.

1.20 Other significant improvements about which we have been informed include revised decision-making tools for FV and VWPR decisions, updated reference material and training packages, training for 300 staff in the NT and letters that include relevant review information. Further improvements to letters and IT systems supporting decision makers are scheduled. These changes and others are detailed further in the agencies' responses to the recommendations listed in Part 5 of this report.

1.21 We acknowledge these reforms and appreciate that the agencies continued to work on the problems in the FV and VWPR programs while we conducted our investigation. This approach was in the best interest of customers who continued to be affected by these programs.

1.22 It is therefore important to reiterate that the observations in this report arise from our consideration of a cohort of decisions made between August 2010 and March 2011. We recognise that the agencies have revised and improved many of the decision-making processes since we first raised our concerns. Nonetheless, where we identified problems arising from our review of decisions, we have made recommendations aimed at improving ongoing decision making. It is evident from the agencies' responses to these recommendations that the work they have already done is well placed to address the issues we have identified. However, we cannot determine whether the changes have worked until they have been fully implemented. For this reason, we will ask the agencies for an update of their progress in responding to our recommendations and take the opportunity to examine the revised decision-making processes three months after this report is published.

¹⁵ Centrelink advised that of the 265 reports, 73 required further work.

PART 2 — FINANCIAL VULNERABILITY DECISIONS

Background

2.1 The FV test is the first hurdle for customers with dependent children seeking an IM exemption. Centrelink has established a specialist team to decide whether people pass the FV test. Consequently, these decisions are usually made during phone interviews with customers located some distance from the decision maker.

2.2 Centrelink is required to comply with social security law when it makes FV test decisions.¹⁶ The *Social Security (Administration) Act 1999* (the Administration Act) requires Centrelink to be satisfied that there were no indications of financial vulnerability in the 12 months before a person applied for the exemption. It also requires the Centrelink decision maker to comply with the legislative instrument made by the Minister¹⁷ when deciding whether to exempt a person from IM. The applicable instrument is the *Social Security (Administration) (Exempt Welfare Payment Recipients – Persons with Dependent Children) (Indications of Financial Vulnerability) Principles 2010* (the Principles).¹⁸

2.3 The Principles state that each of the following items listed under ‘Details’ must be considered by the decision maker.

Heading	Details
Financial exploitation	a) whether the person experienced financial exploitation during the relevant period. ¹⁹
Priority needs	b) what the priority needs of the person and the person’s specified dependants were during the 12 months prior to the decision, and c) whether, during that period, the person applied appropriate resources to meet some or all of those priority needs. ²⁰
Money management strategies	d) what strategies (if any and however described) the person used, during the relevant period, to manage their financial resources, and e) whether it is likely that the person will continue to use those strategies, or similar strategies to manage their financial resources in the foreseeable future. ²¹
Changes to welfare payment arrangements	<i>Urgent payments</i> f) whether the person received more than one payment in relation to their social security entitlement in any fortnight during the preceding 12 months, and the reasons for each of those payments, and

¹⁶ Section 123UGD of the Administration Act gives Centrelink the power to exempt a person from IM. In doing so, s123UGD(1)(d) requires the decision maker to be 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’. The test time is when the exemption decision is made.

¹⁷ Minister for Families, Housing, Community Services and Indigenous Affairs.

¹⁸ Section 123UGD(5).

¹⁹ Per clause 5 of the Principles. The Principles provide a definition of financial exploitation at clause 3(2).

²⁰ Per clause 6 of the Principles. Priority needs are defined in s 123TH of the Administration Act.

²¹ Per clause 7 of the Principles. The Principles include a non-exhaustive list of example strategies.

	<p>g) the reasons for rejection if the person requested more than one payment in any fortnight in those 12 months, and that request was rejected.²²</p> <p><i>Changes to payment payday</i></p> <p>h) how many times (if ever) the person requested that their usual social security payment payday be changed in the last 12 months, and reasons for each request.²³</p>
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2.4 All of the points from a) to h) at paragraph 2.3 are mandatory considerations that must be addressed and documented by the decision maker when they assess whether a person passes or fails the FV test.

Key issues

Lawfulness of decisions

2.5 Given the strict legislative framework, we envisaged that Centrelink’s documents would clearly demonstrate that decision makers had turned their minds to each of the mandatory considerations, as well as recording their views on, and the weight given to, the evidence relevant to each of those considerations.

2.6 Centrelink’s decision makers use a decision-making tool called *Financial Vulnerability Overview*, which is part of Centrelink’s ‘Compulsory Income Management Exemption Workflow’ (CIMEW). At the time that the decisions we reviewed were made, the CIMEW did not properly reflect the mandatory considerations. Instead, the CIMEW listed a range of factors or headings that decision makers should consider. Supporting policy suggested discussion points under each of the headings to guide conversations with customers.

2.7 We identified a range of problems with the CIMEW and how it was used to make decisions. Of most significance, it did not replicate the mandatory considerations set out in the Principles or enable the decision maker to properly demonstrate that they had taken the mandatory considerations into account. While the headings and accompanying questions provided useful discussion points for gathering information relevant to the Principles, they did not, in their own right, amount to proper consideration of the Principles. Example 1, which is the full record of a decision made in relation to an IM exemption request, demonstrates Centrelink’s failure to address the mandatory considerations.

Example 1—failure to address mandatory considerations

Financial Exploitation

Cus does say no to family members sometimes, only in emergency. Cus puts aside \$50

Demonstrated budgeting and savings

cus has savings of \$150, cus has centrepay deductions for rent & electricity, cus spends \$200 every fortnight, cus advised that electricity has been disconnected in the 12mnths twice, therefore exemption will be rejected as cus is financial vulnerable

Centrepay deductions

Centrepay deduction has been used for her bills

Income management

²² Per clause 8 of the Principles.

²³ Ibid.

BasicsCard replacements

Declined BasicsCard transactions

Entitlement period end date changes

Urgent payment applications

nil

Approved money management or other approved course

2.8 Several mandatory considerations were not captured in this decision:

- what were the priority needs of the customer and their dependants during the preceding 12 months
- did the person apply appropriate resources to meet some or all of those priority needs in the preceding 12 months
- what strategies did the person use to manage their finances in the preceding 12 months
- will they continue to use those strategies?

It is not noted in the decision when the electricity was disconnected, so it is not clear whether this occurred within the preceding 12 months. If the two incidents predated this period, they would not have been relevant.²⁴ The circumstances leading to disconnection were undocumented, so it is unclear if the customer was even responsible for their electricity being disconnected.

2.9 Example 1 demonstrates a common problem in the decisions we reviewed, which is that no information was recorded under some of the headings. This was the only record of both the telephone conversation between Centrelink and the customer seeking an exemption, and the decision itself, making it impossible to determine whether the other headings were discussed with the customer and/or whether the customer's responses were regarded by the decision maker to be irrelevant to the decision. It would appear that the mandatory consideration regarding 'how many times (if ever) the person requested that their usual social security payment payday be changed in the last 12-months, and reasons for each request', under the heading 'Entitlement period end date changes' was not addressed.

2.10 We also noted that while the policy guides (FaHCSIA's Guide to Social Security Law and Centrelink's e-Reference) refer to relevant definitions from the Principles and the Act, such as 'priority needs', 'financial exploitation' and 'specified dependants', the CIMEW decision-making tool did not. It was not apparent in the decisions that we reviewed that decision makers satisfied those definitions or that the tool properly supported them to make quality and lawful decisions.

2.11 During our investigation we examined whether the decisions, as evidenced by the decision records, addressed all of the mandatory considerations specified by legislation and were supported by relevant evidence. In our view, where it was not apparent from the face of the record that all of the mandatory considerations had been addressed, the resulting decision could be susceptible to legal challenge.

²⁴ From around March 2011, Centrelink commenced documenting the dates of relevant events in these decisions. None of the decisions in our sample post-date this change in practice.

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2.12 Put simply, each of the mandatory considerations listed in the Principles is a relevant consideration. If there is no evidence on the record that a relevant consideration was taken into account in making a decision, then the lawfulness of that decision is open to challenge, irrespective of the appropriateness of the outcome of the decision.

Duration of FV exemption refusal decisions

2.13 In researching the legislation and policy guidance about FV decisions, we noticed that the legislation did not explain how long an FV exemption refusal decision would be in effect. In theory, a person refused an IM exemption because there were indications of FV in the preceding 12 months could apply for an exemption again as soon after the refusal and as often as they wished. A person refused an IM exemption could successfully reapply if the events that caused the first refusal were, with the passage of time, more than 12 months old.

2.14 Contrary to this, FaHCSIA's policy originally stated that each FV exemption refusal decision applied for 12 months.²⁵ Our review revealed that it was common for Centrelink staff to inform people who were refused an exemption because of the FV test that they could not apply for another exemption for 12 months from the date of the refusal decision. It was also common for Centrelink to inform people who contacted it about reapplying for an exemption within 12 months of the previous rejection that they could not do so. There was no basis in law for this advice and it was unfair to those Centrelink customers who were deprived of the opportunity to make further exemption requests.

2.15 We raised this issue with both agencies at a meeting in March 2011. We were informed that FaHCSIA had revised this instruction so that it no longer advised that exemption decisions were applicable for 12 months. Centrelink started applying this revised instruction in April 2011.

2.16 When this policy change was made, Centrelink reviewed the decisions it had made to refuse exemptions because of the FV test to determine which customers needed to be informed of the change. In conducting this review, it became apparent to Centrelink that decision makers had not been noting the dates of key events in their decisions. Centrelink advises that it now records the dates of events in its decisions. This is a necessary change as it is possible that decision makers had been including events that predated the relevant 12-month period.

2.17 However, we would caution that, in the experience of this office, many Indigenous Australians in remote communities may not account for, or monitor, dates or periods of time in the same way, or with the specificity, that might be displayed by others. Decision makers need to be careful to test the dates provided to them, clearly explain the significance of dates of events in the 12-month period and ensure that there is effective two-way communication. This may require interpreters.

²⁵ Guide 11.1.14.30 at http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.1/ssguide-11.1.14/ssguide-11.1.14.30.html originally stated 'if a person is found to be financially vulnerable, they would not be eligible for an exemption for another 12 months from the time the test took place'. It was revised to remove any suggestion that a failed financial vulnerability test had effect for any length of time.

Quality of decisions

2.18 At a minimum, FV decisions should meet contemporary administrative standards, such as those detailed by the Administrative Review Council in its best practice guides.²⁶ However, many of the decisions in the sample we reviewed lacked adequate detail to determine when key events occurred. There was no evidence that competing considerations had been weighted and balanced in making decisions, and the CIMEW decision-making tool lacked the space for an overall assessment to be made and recorded.²⁷

Example 2—lack of proper consideration

Financial Exploitation

Cus advised, cus can say No to family member when they ask for money.

Demonstrated budgeting and savings

Cus advise buys food and power card - \$100 on food, \$80 on power card. Cus advised has \$70 left over cash in hand.

Centrepay deductions

Cus was not aware of centrepay explained to cus about centrepay will setup if granted.

Income management

Cus advised looking for work at the school.

BasicsCard replacements

Cus advise does not give her basic card to family members, keeps her pin safe.

Declined BasicsCard transactions

Cus has too many declined transaction. Cus has advised does not check her balance before she goes shopping. Cus could not give explanation in regards to why she had a few incorrect pin numbers.

Entitlement period end date changes

Cus advised in hardship.

Urgent payment applications

Nil

Approved Money Management Course

2.19 In this decision, positive and negative financial vulnerability indicators were not balanced. The decision maker made judgements such as '*cus had too many declined transaction(s)*' without explaining how many transactions constituted too many and why. The decision maker did not record how many transactions were declined or whether any or all of the declined transactions were in the relevant 12-month period. The notation under 'Entitlement period end date changes' does not make sense or indicate if there have been any such changes.

2.20 Centrelink needs to exercise caution when considering declined BasicsCard transactions to assess a person's financial vulnerability. For many people living in remote communities, checking their BasicsCard balance is not always easy. Often, the only mechanisms for doing so are contacting Centrelink directly or via a hotlinked phone, or through an IM kiosk machine, if one is available, before making a purchase. Declined transactions are not, in themselves, indicative of failures to meet

²⁶ See footnote 13.

²⁷ Some decision makers utilised the final heading 'Approved money management or other approved course' to record an overview assessment of the information.

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priority needs. A customer may not know how to check their BasicsCard balance²⁸ or have access to the means to do so. In example 2, the decision did not take into account other Centrelink information that showed the customer regularly transferred funds to their BasicsCard shortly after a declined transaction. The latter information suggests that the person had sufficient funds to make their purchase and the difficulty rested, instead, with the workings of the BasicsCard.

2.21 The decisions we reviewed did not show that decision makers complied with FaHCSIA's policy guidance. FaHCSIA's Guide explains that:

'... a number of indicators should be considered to build an overall picture of a person's financial circumstances, to assess whether they are able to meet their priority needs and those of their family, to manage their money, and to be safe from financial exploitation in the absence of income management ... Each factor may or may not indicate financial vulnerability, depending on the discussion with the person. Some factors will not be relevant to the person, or the delegate may have no evidence about a particular factor ... The delegate will document the discussion with the person and balance the factors, to make a decision as to whether there were indicators of financial vulnerability in the previous 12 months.'²⁹

2.22 This is reinforced in Centrelink's e-Reference, which states:

'Do not give any weight to specific indicators or use them as a checklist. Only consider indicators that are relevant to the customer.

Use the indicators to establish an overall impression of the customer's financial circumstances. They are not used to indicate financial vulnerability but are designed to identify whether the customer has been managing their money effectively and have [*sic*] met any financial challenges.'³⁰

2.23 Another problem with the CIMEW decision-making tool was that it combined into one document the decision maker's views, information from the customer and Centrelink's own records. Consequently, as the extracts of the decision in the following example show, the boundaries between the sources are unclear, making it difficult to determine the origin and status of the evidence. The shorthand and brevity of the notes compound the deficiencies in this record.

Example 3—combining all sources of information

Financial exploitation

doc 29/10 "Do not issue BCard to this customer without discussing in regards to family having access" Gives out \$50-100/ft to family. Gives out BC. Gives out PIN. BC not taken, only given out. Can hear voices in background, being coerced?

Demonstrated budgeting and savings

budget=maybe? Evicted=yes, within year? Stretch=no food='saving'? lg_bill=not pay bills=usually not pay

2.24 In the interests of good record keeping, clarity and sound decision making, it is important that Centrelink separately document conversations with customers and third parties and appropriately reference this information in its decision records.

²⁸ Feedback to our office is that many customers, particularly the elderly, find it difficult to check their balances, use the automated services or gain access to a Centrelink office to facilitate this. Instead, people choose to use their BasicsCard and remove things from their groceries if the transaction is declined. People will not realise the consequences that such an approach may have to future IM exemption requests and their ability to pass the FV test.

²⁹ Guide to Social Security, 11.1.14.30.

³⁰ At 003.72050.

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2.25 Several of the decisions we reviewed indicated significant communication problems. Most of the customers were Indigenous Australians in remote and very remote locations, but only two of the decisions in the sample we examined referred to the need for an interpreter. In one, it was noted *‘does the customer require an interpreter – no’*. In another, the decision maker noted on Centrelink’s electronic records that *‘throughout interview I continually ask cus to confirm she understood the questions. Cus advised each time she understood what was being asked’*.

2.26 In April 2011, this office released a report about a lack of awareness of the need for, and skills in working with, Indigenous language interpreters.³¹ We highlighted the widely acknowledged point that it is not appropriate to simply ask someone if they understand what is being said. The better approach is to ask the person to repeat, in their own words, what they believe was said or asked. This enables the English speaker to check understanding and address gratuitous concurrence.³² The FV test is usually conducted over the phone. It requires customers to discuss events in some detail, with reference to dates, money and topics that may be highly personal or make the customer feel uncomfortable, or which require them to have access to information that is not readily available or easily recalled. In these circumstances, even people with sound English language skills may have difficulty understanding and communicating with the Centrelink officer. It was apparent during the review that these issues affected the quality of the FV decisions we sampled.

2.27 FaHCSIA’s Guide explains that:

‘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 ...³³

2.28 We reviewed cases in which the information in the decision record, when viewed as a whole, indicated that IM may not have been necessary as the person was already demonstrating financial capability. For example, some decision makers appeared to take a ‘one strike’ approach. Adverse information under just one heading in the CIMEW was treated as evidence that the customer had failed the FV test. As the following example shows, some of the factors relied on have a tenuous link to the mandatory considerations in the Principles.

³¹ *Talking in language: Indigenous language interpreters and government communication*, Report no. 5/2011, Available at http://www.ombudsman.gov.au/files/Talking_in_Language-Indigenous_Interpreters_REPORT-05-2011.pdf.

³² Gratuitous concurrence: when Indigenous Australians indicate agreement during a conversation in English in order to avoid embarrassment for either party. This can mask a failure to achieve true understanding and engagement.

³³ See http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.1/ssguide-11.1.14/ssguide-11.1.14.10.html.

Example 4—one strike and exemption is refused

Financial exploitation

when i received my payment i buy food and something for (son's name). I can say no to my family when they ask for Money. My family always asked for money but I don't give, sometimes if i have enough I help and gave out \$20.

Demonstrated budgeting and savings

no i dont budget, but i keep it to last a fortnight. i pay rent but already deducted on my pay. I dont use layby, i am working at the moment so when i have large bills i use my pay from work.

Centrepay deductions

no i have not use this payment option yet, but I know its available

Income management

yes i set up some regular expenses, i can manage without IM i can pay on cash and money in the bank with my expenses, my regular are foods, school foods for (son's name), clothes, housing and sometime plane tickets, I normally pay cash.

BasicsCard replacements

i was doing a walk and lost my basic cards so I request for replacement.

Declined BasicsCard transactions

yes it happens, so many times, i enter wrong pin number and sometimes no money in BC. I use my keycard then, sometimes i put away the items. Customer record show too many declined BC transactions for cus. I advised customer that she should check her BC balance first before going to purchase and use the card and keep her pin number safe. I advised customer that her application will be rejected due to this

Entitlement period end date changes

Urgent payment applications

i have not done EBT but i check for my advance loans if available to me, because sometimes i don't work i need to get foods and clothes. I am on leave holiday at the moment and my centrelink pay is not enough for the fortnight.

Approved money management or other approved course

2.29 In our view, the number of times BasicsCard transactions have been refused can only be relevant to the money management Principle (items d) and e) in the table in paragraph 2.3). Yet the decision maker did not link this aspect back to that Principle or attempt to balance competing, favourable information. Instead, it appears the decision maker refused the exemption on the basis of declined BasicsCard transactions alone.

2.30 We also observed that few decision makers took the opportunity to refer customers to money management courses. It would seem to us that all customers who fail an FV test would benefit from one of these courses, yet there was scant evidence in the cases we examined that such referrals were routinely made.

Recommendation 1

Centrelink should separately document conversations it has with customers seeking exemptions and with any third parties who are contacted for the purpose of informing FV decisions. The FV decision should appropriately reference those separate records.

Reviews not actioned or of a poor quality

2.31 During our investigation, we noted numerous cases in which customers' requests for exemption had not been actioned. Case study 1 provides an example of two typical causes—an incomplete FV test assessment and the application of the erroneous 12-month rule. This case study also suggests that Centrelink needs to improve its communication with these customers.

Case study 1—applications not actioned

Ms A asked Centrelink on 30 August 2010 for an exemption from IM (application 1). She passed the FV test but, on 7 September 2010, was refused an exemption on the basis that her children were not engaged in requisite activities (decision 1). The decision letter did not explain which part of the exemption test Ms A had failed or why.

On 12 November 2010, Ms A contacted Centrelink and once more requested an exemption from IM (application 2). It appears the phone line dropped out during the exemption discussion, as Centrelink's records note '*Call was terminated before Financial Vulnerability Test could be commenced*'.

On 17 November 2010, Ms A again contacted Centrelink about an exemption from IM (application 3). She was refused an exemption on the same day on the basis that she did not pass the FV test (decision 2). Centrelink's records indicate that she was also informed she could not reapply for an exemption for 12 months.

On 8 December 2010, Ms A contacted Centrelink and provided information about her income as well as evidence concerning her children's activities (application 4). She was informed that '*exemption denied as not met financial test, she will wait 12 mths to reapply*' (decision 3).

On 14 January 2011, Ms A contacted Centrelink advising she wished to come off IM (application 5). She was informed that '*due to failing FVT in November she is unable to apply for another exemption until November 2011 and will need to supply evidence that her circumstances have improved*'.

On 28 February 2011, Ms A requested an exemption once again (application 6). She was told that she was '*unable to reapply for 12 months*' and was placed on weekly payments instead.

2.32 Along with many other people in her position, Ms A was repeatedly and incorrectly informed that she could not reapply for exemption for 12 months after she failed the FV test. In addition, other aspects of Ms A's requests for exemption were not handled appropriately:

- application 2 was not actioned—there are no records of an attempt to call Ms A back to continue the FV test or of a letter sent to Ms A explaining that she needed to get back in contact with Centrelink to proceed with her application. This application should have resulted in a decision and a letter to Ms A explaining that her application for exemption had been refused, the reasons for the refusal and her review rights
- applications 4, 5 and 6 were denied because they were made within 12 months of Ms A's previous application. However, there were no records of FV decisions or letters sent to Ms A confirming that decisions had been made or that she had the right to seek review of the decisions. Alternatively, these applications could have been treated as requests for review of earlier decisions.

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2.33 There were other examples of this problem in the sampled cases. Centrelink's core work involves making decisions, recognising and acting on review requests and properly informing people of decisions and related review rights, consistent with the legislative and policy framework. Our investigation points to a fundamental breakdown in Centrelink's services to IM customers.

2.34 When there is a problem with an agency's original decision or decision-making process, it can often be rectified through a fresh decision on review. Centrelink provides internal review by an Authorised Review Officer (ARO) for most of its decisions, where requested. Unfortunately, the few decisions in the sample that went to internal review were not improved or enhanced.

Case study 2—problematic review

In late 2010, Ms B, who had not previously been subject to IM, was informed that the new IM regime would apply to her. She applied for, and was refused, exemption on 25 November 2010. The decision records show that information favourable to Ms B being granted an exemption was obtained. The exception was information supplied under the heading 'Urgent payment applications', which noted that *'cus applied for 2 urgent payments in Aug 2010 and Sept 2010 – for rent, elec and food IMCO has sighed doc's – advised cus rejected on theses grounds'*. Ms B requested a review of the decision; she said she meets her financial commitments.

On 29 November 2010, following internal reconsideration by the original decision maker, the decision to reject the exemption was affirmed. A separate FV assessment was not conducted as part of the reconsideration. The records indicate that Ms B was informed that the decision had been affirmed because she had *'shown signs of financial vulnerability over the last 12 months'*. Ms B applied to an ARO for review of the decision.

On 30 December 2010, the ARO wrote to Ms B to inform her that the decision to refuse to exempt her from IM had been affirmed. The decision statement said:

'When assessing whether an exemption can be applied, I have taken into account whether you have requested more than one payment to your social security entitlement in any fortnight during the relevant period and the reasons for each of those payments even if the request was declined as defined in the ... Principles.

It was noted that in the 12 months immediately prior to income management being applied to your payment you had applied for 2 urgent payments to meet your priority needs. [details of each then provided]

Whilst acknowledging your reasons for seeking an exemption from income management, those exemptions are only granted in limited circumstances. I have found that you ... did not meet the financial vulnerability test. It follows that you are subject to income management.'

2.35 Although the ARO referred to the Principles, only one mandatory consideration (changes to welfare payment arrangements) was actually addressed in the decision. The ARO also focused on the 12 months immediately prior to IM being applied to Ms B, whereas the relevant period was the 12 months prior to her request for an exemption. This ARO decision replicates many of the failures highlighted earlier in this report and indicates that Centrelink needs to improve its instructions to, and training of, staff involved in the decision-making process.

Recommendation 2

Centrelink should provide training and guidance to its staff so they more readily identify when a review pathway is available to a customer and take adequate action to facilitate a review.

Recommendation 3

Centrelink should extend the planned training for FV decision makers to Authorised Review Officers who are likely to deal with IM matters to ensure they address all mandatory considerations and follow policy instructions.

The policy guiding FV IM exemption decisions

2.36 FaHCSIA's Guide and Centrelink's e-Reference attempt to provide detailed instructions for a decision-making process that is complicated and multi-tiered. While it is apparent that the headings in the CIMEW decision-making tool were created to help decision makers, the process of simplifying and breaking down the instructions took the guidance too far away from the legislation. Consequently, the tool used in the decisions we reviewed did not adequately address the mandatory considerations. We note that amendments have subsequently been made to the decision-making tool. Importantly, the Guide and e-Reference will need to align with the revised template.³⁴

2.37 We also note that the Guide and e-Reference inappropriately refer to 'approved money management courses' or 'other approved courses' at various points.³⁵ The Principles do not refer to 'approved courses'. Rather, they provide a non-exhaustive list of activities that a person might undertake as part of their money management strategies. We suggest that the reference to 'approved' money management or other courses be removed from the Guide and e-Reference.

Recommendation 4

FaHCSIA and Centrelink should review the use of the terms 'approved money management courses' or 'other approved courses' in the Guide and e-Reference to ensure consistency with the decision-making Principles.

Taskforce review findings

2.38 On 5 September 2011, we sent Centrelink and FaHCSIA a letter in which we detailed our preliminary concerns about the lawfulness of the FV exemption refusal decisions. We recommended that:

- the agencies revise the FV decision-making tool to ensure it captures all mandatory considerations, allows for weighting and assessment of the information and references all applicable definitions

³⁴ For example, the Guide 11.1.14.30 and e-Reference 003.72050 advise decision makers to only address those factors that are relevant to the customer. These will need to be amended to make it clear that decision makers must have regard to all of the mandatory considerations when every FV decision is made.

³⁵ For example, at 003.72050 in the 'detail' section, e-Reference prompts the decision maker to consider 'If the customer has completed a Money Management or similar approved course, discuss the following ...' E-Reference has a link to a pop up screen (zsd.efap7) about 'approved courses', however this information is generic and seems more applicable to courses that people can undertake to meet the eligibility for certain Centrelink payments.

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- FV decision makers be trained in the mandatory considerations necessary for lawful decision making as well as administrative decision making and record keeping principles
- FV decision making should cease until the decision-making tool has been revised and appropriate quality assurance is in place
- all rejected FV decisions should be reviewed to determine if they meet administrative decision-making standards or may be susceptible to a finding of invalidity by a court and, where necessary, remake those decisions.

2.39 In late September 2011, we were informed that the Taskforce had been established to review the FV exemption refusal decisions. We were also advised that while the Taskforce was in operation, any IM exemption requests likely to be rejected because of the FV test would be reviewed by the Taskforce before a final assessment was made.

2.40 In November 2011 we were provided the Taskforce's report, including its findings and recommendations about Centrelink's FV exemption refusal decision making. The Taskforce concluded that the *'original FV exemption refusal decision appeared to be reasonable in only 31% of cases with the remainder either appearing to be unreasonable (15%) or there being insufficient documentation available for the Taskforce to make a judgement (54%)'*.

2.41 Importantly, the Taskforce identified a change in the pattern of FV exemption decisions over time. From August 2010 to 15 April 2011, 1,075 customers were granted FV exemptions and 180 (14%) refused; from 16 April 2011³⁶ to October 2011, there have been 754 exemptions granted and 17 (2%) refused.

2.42 The Taskforce highlighted 10 FV issues:

- the management and skillset of the FV decision-making area require attention
- more could be done to assist customers to obtain exemptions from IM, including referring all customers refused an exemption to money management courses
- the Guide, e-Reference and training material would benefit from refinements based on the four mandatory considerations set out in the Principles
- in 48% of cases, there was a failure to consider all relevant factors and to make holistic/overall assessments of the customer's FV—a 'one strike' approach was used or only evidence supporting a finding of FV was summarised. In some instances, the decision was made before the workflow had been completed
- the decision-making process—while the Taskforce found the process for FV decision making was sound, the decision-making workflow limited the decision maker's ability to document discussions and lacked an effective quality framework
- the CIMEW decision-making tool needs to be redesigned as its headings do not directly relate to the Principles and it does not facilitate the consideration and recording of an overall assessment of the customer's circumstances
- 80% of the people who sought exemptions were remote Indigenous customers who were more likely to require the assistance of an interpreter. There was only evidence of the use of an interpreter in two cases and most

³⁶ 16 April 2011 was the date that FaHCSIA changed its policy advice so that Centrelink was no longer instructed to apply an exemption refusal decision for 12 months.

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customers' records did not accurately note their language needs.³⁷ The Taskforce noted the shortage of accredited Indigenous language interpreters

- existing training requires improvement and more training needs to be delivered to staff
- the lack of a consistent quality assurance framework for FV exemption decisions.

Ombudsman summary

2.43 The Taskforce's recommendations are at Appendix 1 to this report. They are well considered and have already resulted in improvements to FV decision-making practices. More changes are planned. However, it remains the case that inappropriate decisions have been made. Decisions that do not meet the mandatory considerations could be susceptible to legal challenge. Further, Centrelink did not pick up these problems when it conducted a review of its decisions in April 2011.³⁸

2.44 We note that Centrelink has since taken steps to address problematic FV decisions made between August 2010 and September 2011 and that it has implemented changes to improve future decision making. In view of the concerns flagged in this report, the Ombudsman's office makes the following recommendations in addition to those made by the Taskforce.

Recommendation 5

Centrelink should update this office as to the outcome of its review into the use of interpreters and how it will address the concerns raised by the Taskforce and this office.

Recommendation 6

FaHSCIA and Centrelink should consider implementing a standard practice of reviewing new decision-making processes or programs at an early stage of their delivery in order to identify and address problems immediately.

Recommendation 7

In three months' time, FaHSCIA and Centrelink should provide a progress report to the Ombudsman on the impact and implementation of the recommendations made by the Taskforce and this office.

³⁷ The Taskforce noted that the interpreter language listed on most customer records 'is English and there is no way to identify if the customer has a communication problem, needs an interpreter or whether an interpreter was actually used during the FV assessment'. Centrelink informed this office in 2009 that its 'staff record a client's interpreter needs on the client's record. Once this is done, any time an appointment is booked for that client, the system will automatically request an interpreter in the client's preferred language'. It appears that this process is not currently in practice and that Centrelink is not conducting itself as advised for the purpose of the report *Use of interpreters: Australian Federal Police; Centrelink; Department of Education, Employment and Workplace Relations; and Department of Immigration and Citizenship*, report 03/2009, which can be accessed at http://www.ombudsman.gov.au/files/investigation_2009_03.pdf.

³⁸ See paragraph 2.16.

PART 3 — VULNERABLE WELFARE PAYMENT RECIPIENT DECISIONS

Background

3.1 FaHCSIA's VWPR factsheet explains that the VWPR measure applies to 'people assessed by a Centrelink social worker as being vulnerable and where they determine that income management will benefit the person'.³⁹ It enables Centrelink to apply IM to a person who is not subject to IM under one of the other IM measures and is not interested in, or capable of, agreeing to VIM.⁴⁰ FaHCSIA's policy explains that the VWPR measure 'is directed at people who are vulnerable to factors including financial crisis, economic abuse and homelessness/risk of homelessness'.⁴¹

3.2 Section 123UCA of the Administration Act provides that a person is subject to the VWPR measure if, at the time the decision is made, the following conditions are met:

- a) the person is receiving a category H welfare payment⁴²
- b) the person usually resides within a declared IM area⁴³
- c) the person is determined to be a VWPR in accordance with s 123UGA(1) of the Administration Act
- d) the person does not have an excluded payment nominee⁴⁴, and
- e) the person is not subject to IM under one of several other provisions.

3.3 Social workers in the NT are responsible for determining whether a person is a VWPR (condition c) at paragraph 3.2). However, the VWPR measure is just one of the tools social workers have available to them to assist customers.⁴⁵ Other tools

³⁹ http://www.fahcsia.gov.au/sa/families/pubs/income_factsheet/Pages/factsheet_6.aspx.

⁴⁰ VIM is available in metropolitan Perth, the Kimberley region in Western Australia and across the NT. It is predicated on the idea that a person wishes to utilise IM to assist them to manage their funds, including access to the BasicsCard facility. People can elect to exit VIM after an initial 13-week period.

⁴¹ Guide 11.4.1.10 at http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.4/ssguide-11.4.1/ssguide-11.4.1.10.html.

⁴² Category H payments are ABSTUDY (when it includes a living allowance), age pension, austudy, carer payment, defence force income support allowance, disability support pension, income support supplement, newstart allowance, parenting payment, partner allowance, service pension, sickness allowance, special benefit, bereavement allowance, widow allowance, widow B pension and youth allowance.

⁴³ By 4 October 2010, the whole of the NT had been declared an IM area per the Social Security (Administration) (Declared income management areas) Determination 2010. The Social Security Legislation Amendment Bill 2011 is now before the Senate Community Affairs Legislation Committee. In its current form, it will: enable the Minister to specify states, territories or areas in which the vulnerable, long-term welfare payment and disengaged youth IM measures will apply; provide that income management continues despite a change in residence; and provide that certain parents may be required to enter into a school attendance plan and may have income support payments suspended if they do not comply with the plan.

⁴⁴ An excluded payment nominee is a payment nominee, under a formal payment nominee arrangement, who is a public trustee or an individual who is not subject to the IM regime.

⁴⁵ http://www.fahcsia.gov.au/sa/families/pubs/income_factsheet/Pages/factsheet_6.aspx advises that: 'This measure provides Centrelink Social Workers with an additional tool for working with people who are vulnerable and/or at risk ... People can be placed on income management by a Centrelink Social Worker if their individual behaviour or circumstances show that they are vulnerable and/or at risk, and would benefit from being income managed. Centrelink Social Workers consider a set of decision-making principles when looking at the person's circumstances, including whether income management is the most appropriate mechanism to support the person.'

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include VIM, weekly payments of income support, Centrepay⁴⁶ and direct transfers to stores and service providers, referral to support services and money management courses.

3.4 The administration of the VWPR measure is governed by the following sections of the Administration Act:

- s 123UGA(1) empowers a Centrelink social worker to determine that a person is a VWPR, which applies for 12 months unless a shorter period is specified by the decision maker
- s 123UGA(2) requires social workers who determine if a person is a VWPR to comply with the decision-making principles set out by the Minister
- s 123UGA(4) provides that a new VWPR determination can be made while one is already in force
- s 123UGA(5) empowers social workers to vary or revoke a VWPR, in writing, on their own initiative or if a customer who is subject to a VWPR determination requests it under the reconsideration process
- s 123UGA(6) requires social workers exercising the variation or revocation power to follow decision-making principles set out by the Minister
- s 123UGA(8) provides that customers who are subject to a VWPR determination can ask Centrelink to reconsider their circumstances and vary or revoke the determination
- ss 123UGA(9) and (10) explain that Centrelink must action a reconsideration request unless there has been a reconsideration in the past 90 days.

3.5 The reconsideration process is new. While most Centrelink decisions are subject to a review process that includes a fresh decision by an ARO and then external review by the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT), the reconsideration process is distinct and can be run concurrently with the standard review process.

Decision-making principles

3.6 When deciding whether a person is a VWPR, social worker decision makers are required to comply with the decision-making principles set out in the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010* (the Principles).

3.7 Part 2 of the Principles requires the social worker to consider whether:

- a) the person is experiencing an indicator of vulnerability⁴⁷
- b) the person is applying appropriate resources to meet some or all of the person's relevant priority needs⁴⁸

⁴⁶ Centrepay is a facility provided by Centrelink that enables customers to make direct payments from their Centrelink income support to third parties.

⁴⁷ These are financial exploitation, financial hardship, failure to undertake reasonable self-care, and homelessness or risk of homelessness.

⁴⁸ These include the priority needs of the person's child, partner or other dependants. Priority needs include food, non-alcoholic beverages, clothing, footwear, basic personal hygiene items, basic household items, rent, home loan repayments, electricity, gas, fixed-line telephone, health, child care and development, education and training, items required for employment, funerals, public transport services where services are used at least partly for purposes in connection with priority needs, the acquisition/repair/maintenance or operation of a motor vehicle that is used at least partly for purposes in connection with priority needs.

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- c) if the person is experiencing an indicator of vulnerability—whether VWPR IM is an appropriate response to that indicator, and
- d) VWPR IM will assist the person to apply appropriate resources to meet some or all of their priority needs.

3.8 When considering items c) and d) at paragraph 3.7, regard must also be given to:

- a) all the relevant personal circumstances of the person
- b) any services that are available, or that can be made available, to the person.

3.9 The Principles set out the indicators of vulnerability. They are ‘failure to undertake reasonable self care’, ‘financial hardship’, ‘financial exploitation’ or ‘homelessness or risk of homelessness’.⁴⁹

3.10 The Principles are supported by policy guidance, including FaHCSIA’s Guide, which explains:

‘... for a person to be assessed as a vulnerable welfare payment recipient, a delegate, in this case a Centrelink social worker, must make a written determination that the person is a vulnerable welfare payment recipient. In making such a determination, the delegate must consider:

- whether the person is experiencing an indicator of vulnerability
- whether the person is failing to meet their priority needs or the priority needs of their partner, children or other dependants, as a result of experiencing the indicator of vulnerability, and
- whether the person’s total circumstances could be assisted by IM, having regard to other services and mechanisms available.’⁵⁰

3.11 When social workers exercise the power to vary or revoke an existing VWPR determination, whether that is as a result of their own initiative or in response to a request from a customer, they must comply with Part 3 of the Principles. Part 3 requires social workers to consider whether:

- a) the person is experiencing an indicator of vulnerability
- b) the person is likely to experience an indicator of vulnerability if the current VWPR determination is varied or revoked
- c) during the period in which the VWPR has been in force, has VWPR IM assisted the person to apply appropriate resources to their priority needs
- d) if the current determination is varied or revoked, is the person likely to not apply appropriate resources to meet some or all of their priority needs

⁴⁹ Financial exploitation is defined as occurring when another person, or an entity, has acquired, attempted to acquire or is attempting to acquire possession, control of or use of or an interest in, some or all of a person’s financial resources through undue pressure, harassment, violence, abuse, deception, duress, fraud or exploitation. Financial hardship is defined as a person being unable, due to a lack of financial resources, to obtain goods or services, or to access or engage in activities, to meet his or her relevant priority needs and this lack is not solely attributable to the amount of income earned, derived or received by the person. Failure to undertake reasonable self-care is not defined. Homelessness or risk of homelessness is defined as occurring if a person does not have access to safe, secure and adequate housing, or does not have a right to remain, or reasonable expectation of being able to remain, in the housing to which the person has access, or is using, or is at risk of needing to access, emergency accommodation or a refuge.

⁵⁰ Guide 11.4.2.10 at http://www.facs.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.4/ssguide-11.4.2/ssguide-11.4.2.10.html.

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- e) if the person is experiencing an indicator of vulnerability, or is likely to experience an indicator of vulnerability if the current VWPR determination is varied or revoked—whether VWPR IM is an appropriate response to that indicator of vulnerability
- f) VWPR IM will assist the person to apply appropriate resources to meet some or all of the person's priority needs.

3.12 When considering items e) and f) at paragraph 3.11, social workers must also have regard to:

- a) all the relevant personal circumstances of the person
- b) any changes that have occurred to the person's personal circumstances during the period in which the current VWPR determination has been in force
- c) the likely impact on the person, and on any dependant, of the proposed variation or revocation of the current VWPR determination
- d) any services that are available, or that can be made available, to the person.

3.13 This is a complicated decision-making matrix that prompts decision makers to think about what has changed since the VWPR measure was applied to the person, whether things are any better and what would happen if VWPR IM was ceased.

Our review of these decisions

3.14 When we reviewed the VWPR decisions, we considered whether the decisions: documented the mandatory considerations as set out in the Principles; included adequate evidence; were reasonable on the face of the decision record; and met the policy intention. We also examined the letters that customers were sent about VWPR decisions and other records of Centrelink's engagement with these customers.

3.15 We examined a sample of VWPR decisions made between August 2010 and March 2011. We concluded that in only eight of the 59 decisions applying the VWPR measure was it demonstrated by the decision record that all of the mandatory considerations had been addressed, and that decisions were supported by relevant evidence and met policy objectives.

3.16 In addition, in 35 cases the customer was placed on VWPR IM and sent a letter advising them of the decision before the social worker's report had been finalised. The delay in finalising social worker reports varied from one day to 10 months.⁵¹ Five of the eight decisions referred to in paragraph 3.15 were affected by this problem. Taking the delayed reports into consideration, in our view, only three (5%) of the 59 decisions were both sound and documented before the VWPR measure was implemented.

3.17 Of the problematic decisions, in three cases there were no social worker reports so the basis on which the original VWPR was made is unknown. In another three cases, the social worker decided to apply VIM instead of the VWPR measure, but the person was placed on VWPR IM in error.

⁵¹ Centrelink observed that in 27 cases the social worker's report was completed within a week; a further 20 were completed within four weeks; and seven were completed up to three months later.

3.18 Before discussing our concerns in detail, the following VWPR case studies illustrate many of the issues we noted in our investigation. Case study 3 concerns a decision in which the mandatory considerations were not documented and, it appears, the legal requirements have not been met. Case study 4 demonstrates how gaps in evidence can lead to unreasonable decisions.

Case study 3—failure to address mandatory considerations

On 6 October 2010, Ms C was referred to a Centrelink social worker. At the time, she was subject to compulsory IM under the NTER measure but due to be transitioned off IM. Ms C was 13 years old and the mother of a one-year-old baby. After a telephone conversation with the social worker, Ms C was assessed to be a VWPR. She was sent two⁵² letters that day advising her of the decision.

On 14 December 2010, the social worker completed the report underpinning this decision. The report is summarised below under each of the mandatory considerations.

Summary of consideration of each vulnerability factor

The report noted that Ms C lived with her family, liked the BasicsCard (BC) and was happy for things to ‘stay as they are’. Ms C terminated the phone call early in the conversation, so the social worker conducted a file review. It was noted that Ms C had not fully understood an advance payment that had been made the previous month, and seven BCs had been replaced in the previous 12 months, with several BC suspensions. Note was also taken of a mid-2009 report that Ms C’s stepfather had a history of being controlling and violent. The social worker recorded that the number of BCs ‘... could be seen as an indicator that [Ms C] is not able to keep her card secure’. The social worker concluded that Ms C ‘... is eligible for the [VWPR] measure...as her age and the fact she is a mother make her vulnerable to financial hardship’. The vulnerability of Financial Hardship was recorded in the report.

Summary of consideration of whether customer is meeting some or all priority needs

No documented consideration of priority needs.

Summary of consideration of whether VWPR is an appropriate response to vulnerability

The social worker recorded that Ms C ‘... would benefit from continuing to utilise [IM]...and is too young to make an informed decision in regards to Voluntary Income Management’.

Summary of consideration of whether the VWPR measure will assist to meet priority needs

No documented consideration of how the VWPR would assist Ms C to meet some or all of her and her child’s priority needs.

Summary of consideration of all relevant circumstances and any services

The short conversation between the social worker and Ms C and the limited relevant information obtained from the file review raise doubts about whether all of Ms C’s relevant circumstances were considered. The existence of other services or referral was not addressed; the need to do so during the next contact was flagged.

⁵² See discussion at paragraph 4.18.

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3.19 In the record of this decision, the mandatory considerations have not been addressed. Priority needs have not been documented and neither has the availability of other services. Based on the information provided, it would appear that Ms C was not actually experiencing an indicator of financial vulnerability at the time or having difficulty meeting her or her daughter's priority needs. Of even greater concern, Ms C was considered too young to properly consent to VIM, yet there is no evidence that any consideration was given to involving a guardian or parent in the discussion.

3.20 Ms C's situation was reviewed four months after the social worker's report was completed. During a conversation with the reviewing social worker, Ms C expressed her satisfaction with the BasicsCard. She said it helped her and her baby to access food and other basic items. Ms C explained she contributed to the family's rent and was happy to do so. She did not report any difficulty with any members of her family and advised that her family and her school were her primary supports. Ms C asked for assistance to save \$50 for her daughter. The social worker advised her not to spend the money and let it accumulate in her IM account. The social worker decided to continue the VWPR measure.

3.21 This review outcome is problematic because there is no evidence that Ms C was experiencing an indicator of vulnerability or difficulty with her priority needs at that time. It is also a concern that the social worker did not assist Ms C by explaining the matched savings payment⁵³ available to VWPR customers or referring her to a money management course. Had the decision been made to change Ms C to VIM, she would then have been eligible for the \$250 incentive payment that is made to VIM customers for every 26 weeks they remain on VIM.

3.22 On the facts detailed above, the decisions to apply VWPR to Ms C and affirm the decision on review do not accord with the Principles and are not reasonable. In response to questions from this office, which stemmed from our concerns about these decisions, Centrelink advised us that the Taskforce had considered Ms C's case in its review sample. The Taskforce determined that the original VWPR decision did not fully address all the VWPR criteria in the Guide and e-Reference and acknowledged there was no record that VIM had been considered as a more appropriate measure. The Taskforce also noted that the decision letter did not include information about Ms C's review rights. Centrelink advised that Ms C remains on the VWPR measure following a new VWPR determination in October 2011.

⁵³ The Matched Savings Payment is an incentive payment to encourage people on IM to develop a savings pattern and increase their capacity to manage their money. Subject to certain conditions, eligible people can receive \$1 for every \$1 they save, up to a maximum of \$500. Further information is available at http://www.facs.gov.au/sa/families/pubs/income_factsheet/Pages/factsheet_5.aspx.

Case study 4—unsound decision due to a lack of supporting evidence

Mr D, a 37-year-old Indigenous man, was interviewed in his home by a social worker on 15 September 2010. At the time, Mr D was subject to compulsory IM under the NTER measure but was due to be transitioned off IM. Mr D lived with his wife of two years, who looked after him. After a home visit without an interpreter, Mr D was placed on the VWPR measure. On the same day, Mr D was sent two⁵⁴ letters advising him of this decision.

On 11 November 2010, the social worker completed the report underpinning the decision. The social worker reported that the assigned interpreter was unable to assist with the interview for cultural reasons and that Mr D had spoken through his wife for most of the interview. The report is summarised below under each of the mandatory considerations.

Summary of consideration of each vulnerability factor

Mr D's wife of two years was present during the interview and assisted Mr D to communicate. She told the social worker that Mr D had rarely left the house in years, except at night time or in the afternoon to visit family. She stated that Mr D was previously a 'sniffer' and drank alcohol, but added that he had not taken substances in many years. He used to get angry sometimes, but now he just stayed inside most of the time. The social worker noted that Mr D had been diagnosed with an Acquired Brain injury dating from 1994, including Brain Injury Toxic – Alcohol. The social worker reported that Mr D's wife looked after him, but still determined that Mr D was eligible for the VWPR measure due to a failure to undertake reasonable self-care.

Summary of consideration of whether customer is meeting some or all priority needs

The social worker reported from a file review that Mr D's IM deductions included \$60 for rent/housing and \$181 for food. Mr D had spoken about his plans to get his car out of the mechanics, where it was being worked on.

Summary of consideration of whether VWPR is an appropriate response to vulnerability

There was no documented consideration of whether VWPR was an appropriate response to Mr D's apparent failure to undertake reasonable self-care.

Summary of consideration of whether the VWPR measure will assist to meet priority needs

There was no documented consideration of how the VWPR measure would assist Mr D to meet some or all of his priority needs.

Summary of consideration of all relevant circumstances and any services

The social worker reported that Mr D presented shyly and walked with a gait, '*...one of his legs appeared to be shorter than the other.*' The social worker reported that Mr D's wife looked after him and that other family members assisted him to answer questions and provide information during the interview. They appeared to have a supportive relationship with Mr D. The social worker spoke to Mr D's wife about carer payment and assisted her to complete the application forms.

⁵⁴ See discussion at paragraph 4.18.

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3.23 The decision in case study 4 is problematic because there is no documented evidence to support the assessment of vulnerability. There is no evidence that Mr D's brain injury prevented him from caring for himself or that he was failing to meet his priority needs. The decision maker appears not to have taken into account Mr D's family support. Further, the mandatory considerations have not been addressed with regard to whether VWPR IM would assist Mr D to address his purported failure to undertake reasonable self-care or meet his priority needs.

3.24 A Centrelink social worker reviewed Mr D's case on 24 February 2011, following his request on 8 February 2011 to come off IM. The social worker initially interviewed Mr D's wife; she reiterated Mr D's desire to exit IM because of some issues he was having paying a local mechanic. The social worker then made a home visit and spoke with Mr D just inside his front door. There is no evidence that any attempt was made to arrange for an interpreter to attend the meeting. The social worker reportedly explained to Mr D that he was there to discuss Mr D's IM arrangements; Mr D's wife tried to help Mr D understand the social worker's explanation. The social worker reported that Mr D *'appeared to be listening but offered no replies to questions. His whole body also appeared to be shaking'*. After several attempts to communicate with Mr D, the social worker reported that he advised Mr D's wife that he was reluctant to approve Mr D's request to go off VWPR because Mr D had not clearly communicated his desire to do so. The social worker reported that he suggested Mr D continue with the VWPR measure for another three months, when it could be reviewed again. The social worker reported that Mr D's wife appeared to be able to communicate this option to Mr D and she said that they both agreed. The social worker determined that Mr D continued to be eligible for the VWPR measure due to his failure to undertake reasonable self-care. The social worker reported that Mr D agreed to remain on VWPR IM for another three months.

3.25 There is no evidence that Mr D was experiencing an indicator of vulnerability or difficulty meeting his priority needs at that time. The social worker failed to even consider these matters. Despite clear evidence from the initial interview that Mr D required an interpreter, no attempt appears to have been made to arrange for one to attend the review interview. The social worker did not assess Mr D's file or seek to obtain from Mr D's wife or other third parties information relating to the mandatory considerations.

Key issues

Lawfulness of decisions

3.26 It was apparent throughout the investigation that the social workers whose decisions we reviewed were well intentioned and motivated to assist their customers. Many documented their efforts to garner additional support for customers, including making calls to local shops to arrange for meals to improve food security, liaising with accommodation and aged care services and monitoring to check that people's lives were improving. We also acknowledge that their jobs are difficult and complex. Customers do not always act in their own best interests and social workers are often confronted with difficult circumstances and problematic customer behaviour.

3.27 Nonetheless, the VWPR measure has significant implications for personal decision making and self-determination. It is imperative that VWPR decisions comply with the legal requirements, accord with policy instructions and demonstrably meet the objectives of the measure. As illustrated by the case studies, we did not find this to be the case.

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3.28 In part, this may be because the template used to support the making of VWPR decisions did not capture the mandatory considerations for these decisions. Nor did it instruct that there must be a nexus between the identified indicator of vulnerability and the person's inability to meet some or all of their priority needs. Consequently, we found that in 44 of the 59 decisions to apply the VWPR measure, at least one of the mandatory considerations had not been addressed in the documentation. We found that many reports failed to document whether a person was actually experiencing an indicator of vulnerability at that point in time, how existing priority needs were or were not being met, and whether and why VWPR IM was considered an appropriate response. Further, due to the format of the reports, we could not be confident that decision makers paid due regard to additional matters, such as 'all the relevant personal circumstances of the person' and 'any services that are available, or can be made available, to the person' at the requisite points in the decision-making process.

3.29 The same issues arose in social workers' reports of reviews they conducted three and six months into a VWPR determination. These reviews are initiated by Centrelink according to a schedule set when the VWPR is first applied to a person; they are not conducted in response to a request from the customer. Each review report should have specified, but didn't, the power being exercised to conduct a review. This is an important issue because different decision-making principles apply to different powers. Where social workers exercise the power to apply a new VWPR determination under s 123UGA(4), the mandatory considerations under Part 2 of the Principles must be addressed. Where they exercise the power to vary or revoke an existing VWPR determination under s 123UGA(5), the decision maker must comply with Part 3 of the Principles and document their assessment against the mandatory considerations. It appears most likely that these reviews were an exercise of the variation and revocation power and conducted on Centrelink's own initiative. However, the decision-making template used in these reviews was the same as the one used to decide whether to apply the VWPR measure to a person. This ambiguity could be resolved by making available to decision makers separate templates that capture the different considerations applying to the exercise of different VWPR powers.

3.30 The determination that a person is a VWPR is only one of five conditions that must be satisfied for the VWPR measure to be lawfully applied under s 123UCA⁵⁵. It is important, therefore, that any revised templates incorporate areas to document the other requirements, including: whether a person is in receipt of a category H payment; if they usually reside within a declared IM area; if they do not have an excluded payment nominee; and if they are not already subject to IM under certain other provisions.

3.31 A determination that a person is a VWPR must be in effect in order for the conditions of s 123UCA to be met. It was disappointing to find that some decisions lacked a report at all and 35 reports were finalised sometime after the VWPR determination had been implemented. A report should document a decision maker's reasoning, providing evidence that they have complied with the Act and the Principles. In our view, such reports must be finalised before any action is taken in Centrelink's systems or letters sent to customers advising them of a decision.

Recommendation 8

Centrelink should ensure that its decision-making tools require decision makers to address all conditions necessary for the lawful implementation of the VWPR measure under s 123UCA.

⁵⁵ See paragraph 3.2.

Recommendation 9

The decision-making template should require decision makers to specify which power is being exercised. Separate decision-making templates for ss 123UGA(1) and (4), as opposed to s 123UGA(5), should be developed to properly capture the applicable Part of the Principles.

Quality of decisions

3.32 We have several concerns about the overall quality of the decisions we reviewed and question whether the objectives of the measure were met in some of those cases. As noted in relation to FV decision making, the decision-making template tended to be used as a melting pot for observations and third party and customer information. This could be addressed by keeping records of conversations with customers and third parties separate from the decision document. We also suggest that more should be done to assist customers to address their vulnerabilities. At the very least, each VWPR report should document discussions about money management courses and financial counselling and canvas referrals to all relevant support mechanisms.

3.33 In many decisions, we observed a tendency to ascribe the indicator of vulnerability ‘failure to undertake reasonable self care’ to people living with conditions such as dementia, permanent brain damage or schizophrenia, without any evidence that the condition had an impact on their quality of life. For example, case study 4 concerns a customer diagnosed with a permanent brain injury who has numerous supports in place to ensure that he has a reasonable standard of living and care. In our view, taking steps to implement support services and networks and accepting such assistance demonstrates reasonable self-care. The cause of this problem may be the absence of a definition for ‘failure to undertake reasonable self care’ in the Principles and supporting policy material.

3.34 In the decisions we reviewed, we noted a tendency to treat advice that a customer shared income with others as evidence that the customer was experiencing financial exploitation. The Principles say that financial exploitation has occurred when someone has acquired, attempted to acquire or is acquiring the use of, or an interest in, some or all of another person’s financial resources. This acquisition must involve undue pressure, harassment, violence, abuse, deception, duress, fraud or exploitation. Therefore, if sharing is reciprocal, voluntary and equitable, it should not be labelled as financial exploitation. We also observed instances in which historical and possibly out-of-date information was used to justify the assessment that a person was experiencing financial exploitation at the time of the decision. In other decisions, this indicator of vulnerability was applied to a customer only on the basis of a third party’s suspicion. This is not appropriate.

3.35 Conversely, we identified 16 decisions to apply the VWPR measure in which the social worker failed to record the vulnerability indicator of ‘homelessness or risk of homelessness’ despite evidence, often provided by the customer, that they were living in the long grass or had no fixed address. This oversight may be a reflection of problems with the decision-making template, as well as the policy and procedures. We identified numerous relevant parts of Centrelink’s e-Reference that do not include ‘homelessness or a risk of homelessness’ as indicators of vulnerability. This observation highlights the need for decision makers to have greater familiarity with the decision-making Principles so that they are equipped to make good decisions and identify shortcomings in supporting templates.

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3.36 We also noted a lack of supporting evidence, or gaps in evidence, documented in social workers' reports. This problem brought into question the reasonableness of decisions. And it demonstrated a need for improved training in administrative decision making and the requirements of the VWPR measure. The problem was particularly evident in cases we reviewed in which the VWPR measure was applied to a person in a residential care or rehabilitation institution that already met their priority needs. In the absence of any current vulnerabilities or problems meeting priority needs, 'evidence' was often stretched to accommodate concerns that a customer was 'likely to' or 'at risk of' experiencing an indicator of vulnerability and having difficulty managing their money upon leaving the institution sometime in the future. Apart from a risk of homelessness, the other indicators of vulnerability do not allow for, or include, a risk of, or likelihood that, a person will experience the indicator in the future. The application of VWPR in these situations was premature and contrary to stated policy. We noted this problem also in decisions where too much weight had been placed on BasicsCard losses or declined transactions without any discussion with the customer about the reasons for these problems, or what consequences, if any, they had for the customer.

3.37 In making a VWPR determination, there are several points at which a decision maker is required by the Principles to consider whether the VWPR measure is a suitable response to the customer's situation. Specifically, when considering whether the VWPR is an appropriate response to the indicator of vulnerability the person is experiencing⁵⁶, the decision maker is required to also consider all of the relevant personal circumstances of the person⁵⁷ and any services (however described) that are, or could be, made available to the person⁵⁸. In our view, these mandatory considerations should prompt decision makers to give thought to all other suitable alternatives that may assist a person to meet their priority needs, including VIM.

3.38 We reviewed decisions in which it appeared that weekly payments or VIM would have been a more appropriate response to customers' circumstances. This was most evident in cases in which the customer was already on VIM, and happy with it, when they were considered for the VWPR measure.⁵⁹ The VWPR measure manages people's money in the same way as VIM, so there is no apparent benefit in changing to VWPR if a customer is happy to remain on VIM and will not be subject to undue pressure to exit VIM. Further, VIM entitles customers to a \$250 incentive payment every 26 weeks and provides them the opportunity to have a measure of control by choosing to participate. In cases where VIM is a viable alternative, the decision to apply the VWPR measure can be financially disadvantageous for that customer.

3.39 In cases where the customer is already on IM and their BasicsCard is being taken by a third party, moving them onto the VWPR measure will not assist unless the BasicsCard is cancelled and direct monetary transfers to the stores the customer uses are set up. In cases where money management is a significant issue, customers may require daily allocations to their BasicsCard to ensure that money for food is available each day. Our investigation found that some social workers were proactive in this regard, but others did not take these additional but necessary steps.

⁵⁶ Per clause 5(1)(c).

⁵⁷ Per clause 5(4)(a).

⁵⁸ Per clause 5(4)(b).

⁵⁹ Incidentally, we noted several cases in which a social worker made a note on a person's record that they should not be exited from VIM. Their intention may have been to warn against exiting a vulnerable person from VIM without social worker involvement, but it is contrary to the voluntary status of VIM, and the legislation, to seek to limit a person's ability to exit from VIM.

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3.40 We found that well intentioned decision makers sometimes applied VWPR when the issue was not about money. For example, one woman was placed on VWPR when the only documented problem was that her family members were not giving her prescribed and clinic-supplied dementia and schizophrenia medication. The VWPR measure is not capable of addressing this problem. Ultimately, the issue was addressed by an aged care service provider working closely with the family. When the VWPR determination was reviewed six months later, the woman and her grandson (who acted as an interpreter) reported that she now received the medication and her health had improved. She continued to receive Meals on Wheels and home care services and reported that she was happy to continue with IM. Despite there being no difficulties with this woman's priority needs, and arguably no current indicator of vulnerability, consideration was not given to transferring her to VIM as part of a VWPR revocation decision. Instead, the VWPR measure continued. Further, the case was affected by interpreter issues. There was no documented attempt to secure an interpreter for the review conversation or consideration given to whether the grandson was old enough or suitable to act as an interpreter.

3.41 FaHCSIA's VWPR factsheet⁶⁰ states that:

'Centrelink Social Workers consider income management in conjunction with other support services and intervention. They also consider any possibility that the application of income management would place the person and/or their dependants at further risk.'

One of the risks for consideration in Centrelink's VWPR decision making should be whether IM has resulted in violence or an increased risk of violence. In one case, a person requested to come off VWPR IM on the basis that he was being assaulted by people he owed money and threatened by his son, who wanted access to his father's cash. In determining to keep this person on VWPR IM, Centrelink did not address this aspect of the customer's circumstances. The decision record should clearly show how this factor was taken into account and the weight given to it in the context of the customer's overall circumstances.

3.42 Our examination of decision records raised a concern about the way in which third party information had been gathered and used. While some social workers asked customers if they could speak to other people to better understand the customer's circumstances, not all documented the consent, particularly when information was sought from other Centrelink officers familiar with the customer. In only a few cases did we see evidence that information gathered from third parties, such as Job Capacity Assessors, was provided to the customer so they could comment on any adverse material. This step should be built into the decision-making process to ensure that evidence is properly tested and given appropriate weight.

3.43 The quality of the VWPR measure decisions we reviewed was affected by the infrequent use of interpreters. While some social workers documented their unsuccessful attempts to secure interpreters, and it is well recognised that there is a shortage of accredited Indigenous language interpreters, many did not document this need.

⁶⁰ http://www.fahcsia.gov.au/sa/families/pubs/income_factsheet/Pages/factsheet_6.aspx.

Case study 5—use of sibling as an interpreter

Mr E attended a Centrelink office with his sister, Ms F. He requested to exit IM and was referred to a social worker. The social worker conducted an interview with Mr E and Ms F over the phone using a dual headset. The social worker noted that Ms F *'was able to interpret for [Mr E] and provide third party verification'*. It was also noted that Mr E's *'understanding and comprehension of English was very limited, the only words [Mr E] said were yes and no in language and then in English'*.

After asking Mr E if he liked the BasicsCard, to which he replied 'yes', the social worker asked Mr E and Ms F if they knew why Mr E was in receipt of the disability support pension. The response showed low levels of understanding. The social worker asked if Mr E liked to drink alcohol, to which Ms F replied *'yeh he loves to drink...goes silly when his [sic] drunk ... and sometimes hassles her [sic] for money while drinking'*.

The report noted that Ms F *'clearly articulated that she thought that [Mr E] would benefit from remaining on income management'*. The social worker documented Mr E's medical conditions, low IQ score, the number of BasicsCards he had been issued and the number of incorrect BasicsCard PIN entries he had made. It was *'agreed that [Mr E] will remain on Income Management...because of his numerous vulnerabilities and substance abuse issues'*.

3.44 There is no suggestion in the decision record that Mr E's sister was a trained interpreter or that Mr E was offered an alternative interpreter service. It would appear that Mr E's sister, although well intentioned, was there in her capacity as a person who wished Mr E would remain on IM. That is, she was not an unbiased interpreter of the information. Mr E's views about his drinking were not documented and may not have even been conveyed by his sister. Rather than a discussion with Mr E, the interview was a conversation between the social worker and Mr E's sister. There is no indication that the conversation was translated for Mr E. We note that the Taskforce also identified problems with the use of, and access to, interpreters.

3.45 In assessing the quality of VWPR measure decisions, we considered that this program is not one that should be applied lightly. Rather, it should be applied to a person only as a measure of last resort, after all other options have been exhausted or assessed to be inappropriate. Centrelink should ensure that its social workers consider a range of options when working with customers who may meet the vulnerability criteria. These options may include, but are not limited to, weekly payments, financial services, Centrepay, nominee arrangements and VIM. To ensure decision makers properly address the mandatory considerations when making VWPR determinations, they should document the reasons for not pursuing other available options. This would accord with publicly available information, which advises that the VWPR is just one of a range of tools that social workers can use to assist customers.

Recommendation 10

Centrelink should separately document conversations it has with customers and third parties as part of VWPR decision making to ensure that information from those sources is comprehensively recorded, located separately from the VWPR decision itself and appropriately referenced in the decision.

Recommendation 11

Centrelink should incorporate a process into its IM workflows that affords its IM customers the opportunity to consider and address adverse third party information.

Recommendation 12

Centrelink should ensure that its social workers consider a range of options when working with customers who may meet the vulnerability criteria. The social workers should detail the reasons for not pursuing these options when they are making VWPR determinations. These options may include, but are not limited to, weekly payments, financial services, Centrepay, nominee arrangements and Voluntary Income Management.

Internal review processes

3.46 Centrelink customers can ask for most Centrelink decisions to be reviewed under an internal and external review system. The review process is being revised at present but has historically involved reconsideration of a decision by the original decision maker, then review by a more senior Centrelink officer, the ARO. If the customer is still unhappy with the decision, they can apply for it to be reviewed by the SSAT and then the AAT.

3.47 We examined two cases in which the original decisions to apply the VWPR measures were reviewed by AROs. An ARO usually conducts a review of the merits of the case and makes a fresh decision about the matter before them. However, the ARO decisions in these cases did not amount to merits reviews of the determinations to apply VWPR. Nor did the AROs use the opportunity afforded to them to ensure that the social workers, as the original decision makers, had addressed the mandatory considerations necessary for lawful VWPR determinations.

Case study 6—failure to address VWPR determination in ARO review

After noting that the customer was in receipt of a category H payment and lived within a declared IM area, the reasons for the ARO's decision to affirm the VWPR determination were:

'I have taken into account the information in the Social Worker report and your Centrelink record and it is my finding that the decision to apply income management of your [disability support payment] is correct as your circumstances meet the criteria under s 123UGA of the Social Security Administration Act.'

In contrast, when the decision to apply the VWPR measure to this customer was affirmed by the SSAT, it issued a decision detailing the information and evidence it took into account against each of the mandatory considerations.

3.48 Most VWPR customers are Indigenous Australians in remote localities. It is well recognised that Indigenous Australians are less likely to seek reviews of social security decisions. This cohort is even less likely to do so given the life circumstances⁶¹ that have brought them to the attention of Centrelink's social workers. When they do seek review, it is important that the experience is meaningful, even if it only results in a better explanation for the decision affecting them. In case study 6, it appears that the ARO did not properly fulfil their responsibilities under the merits review system in that they did not decide for themselves whether VWPR should have been applied. This issue requires attention by Centrelink. We suggest that ARO training on this measure be improved and that consideration be given to ARO specialisation.

⁶¹ This includes mobility issues, numeracy and literacy challenges, language barriers, living in remote and isolated locations and other issues of social disadvantage.

Recommendation 13

Centrelink should extend the proposed VWPR decision-making training to Authorised Review Officers who are likely to deal with IM matters to ensure that they address all mandatory considerations and follow policy instructions.

Dealing with customers with diminished capacity

3.49 One of the many challenges for social workers who are delegated to make VWPR decisions is how best to engage with people who may lack the legal capacity to make decisions or act in their own interests. Determining when a person has lost capacity, whether it is permanently lost or only for a period, and whether it is lost for some or all Centrelink business, is difficult. Historically, substituted decision making in the form of guardianship, power of attorney or other care arrangements have been used; Centrelink has used a model in which people can nominate another person to act for them in their Centrelink business.⁶² However, it is increasingly recognised that substituted decision making is at odds with the international movement towards supported decision making.⁶³

3.50 While none of the reports we reviewed raised this issue specifically, it was evident that temporary loss of capacity should have been in question when customers were intoxicated during interviews. In one case, the social worker tried to interview the customer on two separate occasions to avoid the customer's intoxication. The customer was ultimately interviewed although the social worker noted in their report that the customer was 'incoherent' at times. There may also be permanent loss of capacity when people have conditions that impair cognition, such as advanced dementia or significant brain damage following injury or illness.

3.51 In some cases, if engagement with a customer cannot be postponed until they are better, it may be appropriate for Centrelink to seek the assistance of a third party to at least assist the customer to put their case. Community legal centres or community advocacy organisations may be options, although it would be a matter for them to determine whether a person had lost capacity to give instructions to a representative. In suitable cases, social workers could engage with, or refer customers and/or their supporters to, adult guardianship providers available in each state and territory. In our view, in no circumstances is it appropriate to discuss a person's living arrangements and priority needs for the purposes of VWPR determination when they are temporarily or permanently incapacitated and without support or assistance. We are aware that Centrelink is working to improve its response to these types of issues and we draw this particular group of customers to its attention.

⁶² Person Permitted to Enquire (authorised to make enquiries on someone else's behalf); Correspondence Nominee (authorised to enquire, act and make changes on someone else's behalf); Payment Nominee (authorised to receive payments on someone else's behalf); and both Payment and Correspondence Nominee (authorised to enquire, act and made changes and receive payments on someone else's behalf).

⁶³ Australia ratified the UN *Convention on the Rights of Persons with Disabilities* on 17 July 2008 and the Convention's Optional Protocol on 21 August 2009. The Convention has changed the focus for those providing services to people with disabilities from a traditionally protective and paternalistic approach to one that seeks to promote the equal participation of people with disabilities in all aspects of life. In effect, the Convention requires states to recognise the right of people with disabilities to enjoy legal capacity on an equal basis with other people.

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3.52 Incapacity can also arise if a customer is very young. Case study 3 concerns a 13-year-old who was deemed by a Centrelink social worker to be incapable of consenting to VIM because of her age. However, there is no record of the social worker making any effort to secure the assistance or support of a parent or guardian for this customer's VWPR interview. In our view, the customer was either too immature to understand VIM, in which case a parent or guardian should have been with her during the interview, or mature enough to be interviewed alone, making VIM a viable option.

Recommendation 14

FaHCSIA and Centrelink should develop options and guidelines for engaging with customers who are under age or experiencing a loss of capacity. This area of decision making should be incorporated into the Department of Human Service's current project concerning substituted decision making.

The policy guiding VWPR determinations

3.53 The policy guiding VWPR decision makers is held in FaHCSIA's Guide and Centrelink's e-Reference. In our view, these could be improved to better support this program.

3.54 Centrelink's e-Reference fails to refer to the vulnerability indicator 'homelessness or risk of homelessness' in key places.⁶⁴ Further, improved instructions would include a better explanation regarding what constitutes the vulnerability indicator of 'failure to undertake reasonable self care'. E-Reference explains that 'failure to undertake reasonable self care can be due, for example, to substance abuse, problem gambling and/or mental health issues. Other factors may be considered'.⁶⁵ FaHCSIA's Guide provides a similar explanation.⁶⁶ The problem is that this is not a definition of 'failure to undertake reasonable self care', but a description of its possible causes. Consequently, some decision makers may have determined that customers experienced this vulnerability indicator just because they had mental health issues, for example. But an accurate determination could only be made by assessing whether the mental health issues had led to the customer failing to undertake reasonable self-care. This shortcoming must be addressed.

3.55 The Guide and e-Reference would also be improved if they provided greater clarity about the power being exercised when a social worker conducts a review of an existing VWPR determination to ensure that any decision to vary, revoke or affirm a decision accords with the relevant decision-making Principles. Clear instructions to AROs may also improve the quality of reviews.

3.56 E-Reference⁶⁷ explains that VWPR reviews can occur 28 days before the VWPR end date, which is the date specified by the social worker at the time VWPR commences for that customer, and upon request for reconsideration. We suggest that there should be an additional trigger for reviews of existing VWPR decisions. That is, reviews should be conducted if and when Centrelink becomes aware of changes to a customer's circumstances that are likely to have an impact on the VWPR determination, such as moving to another location or housing arrangement or becoming homeless.

⁶⁴ Its absence was noted in the overview section of 003.71040 and items 2 and 5 of the detail section of 003.71040. It may have been missed in other parts of e-Reference.

⁶⁵ Item 2 in the detail section of 003.71040.

⁶⁶ At 11.4.2.20.

⁶⁷ 003.71050 in the overview section.

Recommendation 15

FaHCSIA and Centrelink should amend their policy instructions in accordance with the issues highlighted in this report, including the need to amend the definition of ‘failure to undertake reasonable self care’ and include the vulnerability indicator of ‘homelessness or risk of homelessness’ in all relevant sections of e-Reference.

Taskforce review findings

3.57 The Taskforce established in response to our preliminary concerns about FV exemption decision making was also directed to examine a 25% sample of the VWPR decisions made between August 2010 and September 2011. Of the 283 decisions made in that period, the Taskforce reported that it examined 79 (28%). The Taskforce’s sample included some of the cases considered by this office. The Taskforce interviewed eight social workers involved in VWPR decision making.

3.58 Of the 79 cases reviewed by the Taskforce, 75% of customers were in receipt of a disability support pension and 16% received the age pension. The Taskforce concluded that *‘overall the level of documentation and decision making for the VWPR measure was comprehensive in the majority of cases and appropriate decisions were made in 78% of the cases’*. It identified that 8% of cases had insufficient evidence for the Taskforce to make an assessment about the decision, and in 14% of cases the decision was *‘clearly wrong’*. Sixteen (20%) of the cases were returned to social workers for further work.⁶⁸

3.59 The Taskforce raised eight issues that it classified as significant:

- the need for better management of the social workers responsible for VWPR decisions
- the lack of documented customer wellbeing assessments, usually conducted by a social worker at the start of a VWPR process. The range of options considered and their efficacy should always be documented. In the cases considered by the Taskforce, resource limitations meant that action plans arising from assessments were not always implemented
- in 22% of cases in the Taskforce’s sample, there was no documentation of the customer’s relevant personal circumstances or offers for referral to other sources of assistance⁶⁹
- problems with the design of the VWPR process, including hidden parts and segmented processes affecting quality, timing and transparency
- the need for greater use of interpreters, noting difficulties accessing sufficient numbers of accredited Indigenous interpreters. Of the 79 cases examined by the Taskforce, 62% of customers were from remote Indigenous communities; in only 9% of cases was there evidence that an interpreter had been used
- ‘patchy and fragmented’ training of NT social workers making VWPR decisions. The Taskforce found there *‘... needs to be ongoing staff development and regular reviews of processes which can feed into continuous improvement in income management administration ...’*

⁶⁸ See footnote 15 for the outcome of the 16 remitted cases.

⁶⁹ We note that this suggests that the mandatory consideration of ‘any services that are available, or that can be made available, to the person’ has not been addressed.

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- the need for a quality assurance framework. The Taskforce suggested reviewing an existing quality decision-making tool with a view to rolling it out to all NT sites, and nationally as IM is extended across Australia. Further, the Taskforce suggested that the quality assurance framework require a report for each VWPR decision, to be completed within five working days of the VWPR decision.

3.60 The Taskforce's recommendations are at Appendix 1.

Ombudsman summary

3.61 There are many aspects of VWPR decision making about which this office and the Taskforce have common views. Many of the problems about which we agree have already been addressed in the Taskforce's recommendations. Further, we acknowledge the agencies' advice that several of the recommendations in this report have been resolved through improvements that have already been implemented. In three months' time, we will request a sample of more recent VWPR decisions to assess whether the decision making has improved. We will then consider whether the changes brought about by the agencies, whether in response to our letter of September 2011, the Taskforce or additional recommendations in this report, have addressed our concerns.

3.62 There are two points on which we have a different view from the Taskforce. The Taskforce suggested removing the scheduled three- and six-month reviews. While the cases we examined showed that not all reviews were carried out as planned, we did observe that some social workers used them to provide further assistance to their customers. These reviews are not legislated, so it is a matter for Centrelink to decide whether they will be maintained. However, it appears to us that as the numbers of VWPR decisions are decreasing, it would be preferable for at least six-monthly reviews to remain, provided staff are adequately resourced and supported by training and guidelines.

3.63 We also disagree with the Taskforce's recommendation that a social worker's VWPR reports should be completed within five days of the decision. The report is the record of the decision and the only evidence that it has been made in a way that complies with the legislation. In our view, the report is the decision. It must be correct before the decision is given effect. Accordingly, VWPR determinations must not be implemented until the social worker's report has been finalised and, preferably, quality assured.

Recommendation 16

Centrelink should implement a workflow that ensures VWPR assessments cannot be implemented in Centrelink's systems and customers cannot be informed of such decisions until the social worker's VWPR report has been finalised and quality assured.

PART 4 — QUALITY OF LETTERS

4.1 Centrelink routinely communicates with its customers in writing. As part of Centrelink’s merger into DHS, a five-year program to improve Centrelink’s letters is underway.

4.2 The new IM program that commenced in the NT in mid-2010 offered an opportunity for Centrelink to develop clear and effective letters about the program. Overall, we found that the FV and VWPR letters sent to customers between August 2010 and March 2011 were of a poor quality. They did not properly inform customers of decisions or explain options, including the right to have a decision reviewed. While we note there have been many developments in this area since then, in order to properly report on the observations we made during our investigation, our key areas of concern are detailed below.

Lack of reasons and other relevant information

4.3 To put it simply, decision letters should provide sufficient information for the recipient to understand the decision that has been made, the program under which it has been made, why it has been made, what it means for the customer and what they can do if they disagree.

4.4 In the case of the FV test, we had expected that the key points of the decision would be reiterated in the decision letter, or a copy of the decision record would be provided to the customer. This would allow the customer to address any inconsistencies or errors and/or make adjustments to the information recorded about their circumstances to improve future chances of an exemption. However, the FV test decision letters typically only informed customers that:

‘After careful consideration, a decision has been made to reject your claim for exemption from Income Management. This means that Income Management will continue to affect your payment arrangements.’

4.5 This is not enough information for a customer to understand the basis for a decision. It does not provide reasons or explain that the FV test led to the exemption refusal. Customers who passed the FV test but failed the children’s activities part of the exemption test received decision letters in exactly the same terms. Neither letter made it clear which part of the exemption test the customer had failed or why. Nor did the letters inform customers that they could reapply for an IM exemption.

4.6 We found similar problems with the VWPR decision letters. While a few social workers documented discussions they had with customers to explain the reasons for a decision and the customer’s review rights, most did not. Some customers could not be contacted when a VWPR decision was being made, so were entirely dependent on the decision letter for an explanation of the decision and the reasons for it. The standard letters sent to people affected by VWPR decisions are replicated in case study 7.

Case study 7—VWPR letters⁷⁰

A woman whose income was being managed under the VIM measure asked to exit IM. She was interviewed by a social worker on 11 January 2011. On 13 January 2011, she was sent a letter stating:

‘Your payments are due to be income managed ... Your payments will now be subject to Income Management. Centrelink has assessed your current situation, and has decided that you are a Vulnerable Welfare Payment Recipient Customer. This decision is based on a recent assessment of your circumstances by a Centrelink Social Worker...You [sic] payments will now be income managed...You need to contact us within 56 days to discuss what things your income managed money will be used for. If you do not contact Centrelink by 10 March 2011 your fortnightly payments will be automatically income managed.’

The same day, the woman was sent another letter advising:

‘You have been assessed as a Vulnerable Welfare Payment Recipient. On 13 January 2011 an assessment of your circumstances was undertaken by ... a Centrelink Social Worker. Concerns were raised about your current circumstances. Although different money management options were discussed with you, a decision has been made to assess you as a Vulnerable Welfare Payment Recipient. This means you may receive a letter from Centrelink requesting you contact regarding Income Management. If you think your situation has changed and you would like your Vulnerable assessment reconsidered, you are able to contact [social worker] to have a reassessment of your circumstances. If a decision is made to continue your Vulnerable status, you will need to wait 90 days before you can request another reconsideration.’

On 18 February 2011, she was sent another letter advising:

‘The reason your payments are being income managed has changed ... Income Management has been applied to your fortnightly payments under the Vulnerable Welfare Payment Recipient Measure. As your situation has changed, Centrelink has reviewed your circumstances and a decision has been made to income manage you under the Vulnerable Welfare Payment Recipient initiative from 18 February 2011 to 13 January 2012.’

The same day, the social worker finalised the report documenting the reasons for the decision.

4.7 The decision to apply the VWPR measure in this case was sound, but the social worker’s report was finalised after the measure commenced. None of the letters explained why the VWPR was applied or how it differed from VIM.

4.8 Social worker reports are not routinely issued to customers and the decision letters we reviewed often provided no more explanation than ‘*concerns were raised about your circumstances*’. It is likely, therefore, that many VWPR customers in our sample did not know why the measure had been applied to them or extended or what evidence was used to make the decision. To address this problem, Centrelink could implement a practice of routinely issuing to customers the social worker’s report pertaining to their VWPR determination. Alternatively, Centrelink could summarise the key evidence and conclusions in each customer’s decision letter.

⁷⁰ The letters are not formatted in the same way that they were sent to the customer as Centrelink’s computer system does not retain the formatting.

Lack of review rights information

4.9 Centrelink customers may request reviews of most Centrelink decisions. Reviews are free and offer an opportunity for a decision to be remade and for new information to be considered. It is standard practice for Centrelink to include in its letters information about the right of customers to request an internal review of a decision and legislation requires AROs to inform customers of their right to seek a review by the SSAT.

4.10 This office published a report in 2011 about a range of problems arising from Centrelink's standard review processes.⁷¹ Consequently, Centrelink is trialling a new review system. While we commonly receive complaints about its review processes, our investigations usually show that Centrelink's standard decision letters provide people with the necessary information about their review rights. However, we were concerned that the FV and VWPR decision letters we examined did not include any information about customers' review rights.

4.11 The letters we examined that were sent to customers who had passed the FV test but were refused an exemption from IM because of the child/children activity test also omitted review rights information.

4.12 While Centrelink advised that this problem was rectified in September 2011, it remains the case that the making of decisions and the provision of review rights information to customers is core Centrelink work. It is disappointing that the decision letters sent to some of Centrelink's most vulnerable customers did not include this key information, which should have been incorporated into the template letters when they were developed. The omission of review rights information compounds the disadvantage experienced by IM customers.

4.13 VWPR customers are entitled to know that there are two separate processes available to them to challenge a VWPR determination. They can ask the social worker to reconsider the decision, provided they have not done so in the preceding 90 days, and they can seek the standard review pathway for internal and then external review by the SSAT and AAT. The differences between these two processes, as well as the option to pursue them concurrently, should be made clear to customers. It is important that this information is reiterated in each letter about a decision to apply the VWPR measure, after a VWPR has been reviewed or reconsidered by a social worker and when an ARO issues a review decision.

Inaccurate or unclear information

4.14 As noted earlier in this report, FaHCSIA initially advised Centrelink that each FV exemption refusal decision precluded a customer from making a further exemption request for 12 months. When FaHCSIA revised this instruction so that customers could reapply at any time, Centrelink contacted affected customers to explain that they could seek an exemption again if they wished. Some customers were contacted by phone and others in writing. The language in these letters was complicated, included errors and may not have meant a great deal to the customers it was meant to inform, particularly those customers whose original decision letter had not even referred to the FV test and/or had been sent to them many months earlier.

⁷¹ The report is available at www.ombudsman.gov.au/files/centrelink_the_right_of_review_having_choices_making_choices.pdf.

Case study 8—information in letters

Ms G telephoned Centrelink on 31 January 2011 to seek an exemption from IM. She was refused an exemption on the same day. A decision letter was sent to her, also on the same day, which said *'After careful consideration, a decision has been made to reject your claim for exemption from Income Management. This means that Income Management will continue to affect your payment arrangements.'*

On 7 June 2011 Ms G was sent a letter that said:

'There has been a change in policy concerning when a customer can apply for an exemption after failing the Financial Vulnerability Test. As a result of this change Centrelink is reviewing rejected applications for an exemption from Income Management. We tried to phone you on 07/06/2011 however we were not able to contact you. We would like to talk to you about your application for an exemption for income management that was rejected.

As your application had been rejected on the basis of failing the financial vulnerability test we would like to talk to you about reviewing the decision to reject your application for an exemption from Income Management again. You can apply for an exemption from Income Management at any time, however Centrelink will take into consideration if there have been any indicators of financial vulnerability during the 12 months prior to your application for an exemption from Income Management.'

4.15 This correspondence was not an effective way of communicating with a person who had previously been informed that they could not reapply for an exemption for 12 months.

4.16 The quality of the letter advising of the change in policy would have been improved had it explained: what the FV test is (particularly given the original decision letter did not do so); the details surrounding the customer's earlier application and the outcome; Centrelink's previous advice that the customer could not reapply for exemption for 12 months was incorrect; and the customer could reapply for an exemption at any time and Centrelink would then make a new decision. The letter should have also included information about the exemption test, including the requirements in respect of dependent children's activities.

4.17 As case study 7 shows, the VWPR letters were similarly deficient. The first letter in that case study was written as though IM was new to the customer, whereas she was already a VIM customer when the VWPR determination was made. Further, the use of inconsistent language in the letters, such as interchanging references to 'Vulnerable Welfare Payment Recipient Measure', 'your Vulnerable assessment' and 'the Vulnerable Welfare Payment Recipient initiative' was confusing. References to 'changed circumstances' in the second and third letters compounded the confusion.

4.18 There was a raft of problems with the VWPR letters that we reviewed. It was not uncommon, for example, to find that up to three letters had been sent to the same customer in a single day. In one case, a woman whose VWPR determination had been revoked was sent a letter erroneously advising that her payments were due to be income managed under the VWPR measure. In numerous cases in which a review had been carried out by a social worker, a decision letter was not sent to the customer advising of the outcome. In another case, the review letter implied that the VWPR measure was being newly applied to the recipient, rather than affirmed. Also of concern was Centrelink's advice in December 2011 that if a review did not result in a change in the VWPR determination, there was no need to inform the customer of the outcome. As it is possible that a decision to leave a VWPR determination in place may be reviewed by an ARO and, ultimately, externally, it would be preferable for all VWPR social worker reviews to be finalised with an explanatory decision letter. This is particularly important when the customer has not been contacted during that review and is unaware that a review has taken place.

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4.19 We also observed that both the FV decision letters and the VWPR decision letters inappropriately advised customers that the letter constituted a request for information under s 192 of the Administration Act and that failure to comply could lead to penalties. Section 192 enables Centrelink to require a person to provide information or produce a document. A request under s 192 must be made in writing in terms that comply with s 196. Section 196 requires, among other things, that the notice must specify how the person is to provide the information or produce the document and the period within which they must do so. However, the FV exemption refusal decision letter does not actually request any information from the customer. Therefore, it appears the letter is not an exercise of Centrelink's power under s 192 and it is not clear why the letters refer to this section. In the event the letter is an exercise of Centrelink's power under s 192, it does not comply with the requirements of s 196 to state what information is requested, how it is to be provided or the timeframe for doing so. This indicates another flaw in the template underpinning decision letters.

4.20 Conversely, we identified cases in which people were sent letters advising that more information was required to assess the children's activity portion of the IM exemption test. These letters erroneously advised that 'This letter is a notice of a decision' and referred the customer to the back of the letter. On the back of the letter, the customer was informed that the letter was a notice under s 192 of the Administration Act, which appears the more accurate description.

4.21 Centrelink's Taskforce advised us that the inappropriate references to s 192 in these letters had been remedied by a systems fix. It is important to ensure that these problems do not persist in correspondence for other IM components.

Taskforce review findings

4.22 In respect of the FV exemption refusal letter, the Taskforce identified many of the same issues that our investigation found. The Taskforce made recommendations about including in letters the reasons for a decision and information about appeal and review rights. It also recommended clarifying the nature of the letter (a decision or request for information) and generally consolidating and improving automatically generated VWPR letters.

Ombudsman summary

4.23 The letters examined by this office were, overall, unclear, contradictory and unhelpful. It appears likely that many of the problems evident in the FV and VWPR letters extend to other areas of Centrelink's IM communication with its customers. In order to capture our concerns about the letters used during the decision period that we reviewed, and notwithstanding the amendments that have already been made to IM letters, the Ombudsman makes the following recommendations.

Recommendation 17

Just as the Taskforce recommended that reasons be provided to customers who have been refused an exemption because of the FV test, VWPR customers should receive reasons for decisions in their letters.

Recommendation 18

While considering the letters across its programs, Centrelink should aim to improve its letters so that they advise customers in clear and simple language:

- of the decision that has been made, including an explanation of the applicable program or measure
- the reason(s) for that decision including relevant evidence
- what the consequences of the decision are for the customer
- what the customer can do about the decision if they disagree with it.

Recommendation 19

Centrelink should ensure that all VWPR decisions, whether applying, affirming, extending, varying or revoking a VWPR determination, result in a letter to the customer explaining all reconsideration and review options.

Recommendation 20

As we have seen examples of incorrect references to s 192, or erroneous advice that a letter seeking information is a decision letter, in other aspects of IM decision making, Centrelink should take steps to ensure these problems are addressed in all of its IM programs.

PART 5 — RECOMMENDATIONS AND AGENCY RESPONSES

5.1 Centrelink and FaHCSIA were provided with a draft version of this report in February 2012 and invited to comment on the content and recommendations. The agencies' responses have been considered and, where appropriate, incorporated into the report. They provided combined responses to the recommendations, which are set out below.

5.2 Since we first outlined our preliminary concerns to the agencies in September 2011, they have implemented a series of changes aimed at improving FV and VWPR decisions and decision-making processes. While our recommendations focus on remedying the problems we identified in the decisions we examined, noting that these reflected the situation at a certain point in time, we are mindful that practices have moved on. In responding to this report, the agencies provided details about changes and improvements they had already made, those they propose to implement and further actions planned in response to some of the Ombudsman's recommendations. It is clear that much has been done and we look forward to seeing the effects of the agencies' improved practices when we revisit the issues in three months' time.

Financial vulnerability decisions

Recommendation 1

Centrelink should separately document conversations it has with customers seeking exemptions and with any third parties who are contacted for the purpose of informing FV decisions. The FV decision should appropriately reference those separate records.

Response: Agreed

The department has improved work flows for recording and referencing of information from the customer and third parties. The Centrelink Income Management Exemption Workflow (CIMEW) now has the capacity to record a sequence of events reflecting the four principles as well the inclusion of two new screens to record decisions about FV.

Recommendation 2

Centrelink should provide training and guidance to its staff so they more readily identify when a review pathway is available to a customer and take adequate action to facilitate a review.

Response: Agreed

Training packages have been revised to reflect the policy intent and provide direction to staff about review pathways. Refresher training utilising these new packages was delivered to approximately 300 staff in the Northern Territory in December 2011, January and February 2012. Relevant reference material has also been updated to better reflect the legislative intent.

Recommendation 3

Centrelink should extend the planned training for FV decision makers to Authorised Review Officers who are likely to deal with IM matters to ensure they address all mandatory considerations and follow policy instructions.

Response: Agreed

Authorised Review Officers who conduct reviews of IM decisions were provided with training in March 2012.

Recommendation 4

FaHCSIA and Centrelink should review the use of the terms ‘approved money management courses’ or ‘other approved courses’ in the Guide and e-Reference to ensure consistency with the decision-making Principles.

Response: Agreed

FaHCSIA will update the Guide at 11.1.14.50 and Centrelink will update e-Reference accordingly. Rather than mention ‘approved’ money management or other courses, instead the Guide and e-Reference will refer to ‘courses to learn or update financial skills’.

Recommendation 5

Centrelink should update this office as to the outcome of its review into the use of interpreters and how it will address the concerns raised by the Taskforce and this office.

Response: Agreed

The department has established procedures to ensure customers have access to Indigenous interpreters where appropriate. There are programs and policies in place to identify customers who require an interpreter and this is supported by cultural awareness training for staff that provide services to Indigenous customers. The department took the opportunity during delivery of refresher training, in the Northern Territory, to remind staff about the use of interpreters with Income Management customers.

The department continues to work to improve the availability of interpreters to customers however, as noted in the *Talking in Language*⁷² report, there is a critical shortage of trained and accredited Indigenous language interpreters.

The department intends to establish a working group to advise on the appropriate use of interpreters in line with best practice standards. The working group will commence operating during the first quarter of 2012/13.

⁷² See footnote 34.

Recommendation 6

FaHSCIA and Centrelink should consider implementing a standard practice of reviewing new decision-making processes or programs at an early stage of their delivery in order to identify and address problems immediately.

Response: Agreed – noting that this recommendation is not restricted to income management decision-making processes or programs

The department welcomes all opportunities to participate in the review of new decision-making processes and programs. The change to exemption policy in 2011 was as a direct result of an interdepartmental review between FaHCSIA and the department.

The department will continue to review new decision-making processes and programs at an early stage of delivery in order to identify and address problems immediately.

Recommendation 7

In three months' time, FaHSCIA and Centrelink should provide a progress report to the Ombudsman on the impact and implementation of the recommendations made by the Taskforce and this office.

Response: Agreed

The department will provide a report on the impact and implementation of the recommendations made by the Taskforce and the Ombudsman three months after the publication of this report.

Vulnerable welfare payment recipient decisions

Recommendation 8

Centrelink should ensure that its decision-making tools require decision makers to address all conditions necessary for the lawful implementation of the VWPR measure under s 123UCA.

Response: Agreed

Since January 2012 the department has implemented a mandatory Quality Decision Making checklist for every VWPR report to ensure all legislative requirements have been met. In addition to this social workers are using a report template which addresses the legislative requirements and provide guidance with decision making. Changes will be made to the Social Work Information System (SWIS) in June 2012 to support social workers in this requirement.

Recommendation 9

The decision-making template should require decision makers to specify which power is being exercised. Separate decision-making templates for ss 123UGA(1) and (4), as opposed to s 123UGA(5), should be developed to properly capture the applicable part of the Principles.

Responses: Agreed

Until IT changes are implemented in June 2012, all social workers are using a separate template to guide decision making for original decisions and reviews of decisions. These templates capture the applicable part of the Principles. Proposed changes for the June 2012 systems release will include separate report templates that address policy requirements for original decisions, as well as subsequent reviews of decisions.

FaHCSIA is reviewing the legislative instrument to ensure that the decision-making Principles are clearly specified for the social worker to make their decision.

Recommendation 10

Centrelink should separately document conversations it has with customers and third parties as part of VWPR decision making to ensure that information from those sources is comprehensively recorded, located separately from the VWPR decision itself and appropriately referenced in the decision.

Response: Agreed

The systems release will see a system enhancement to SWIS which includes an update to the current decision report format, a new section to record contact with third parties, and the ability to identify information provided that was considered as part of the vulnerable assessment. Until these changes are implemented social workers are using an interim report template to record third party evidence used in the making of a VWPR decision.

Recommendation 11

Centrelink should incorporate a process into its IM workflows that affords its IM customers the opportunity to consider and address adverse third party information.

Response: Agreed

In the process of the IM assessment the social worker will, where possible, discuss third party information that has been provided, with the customer.

Recommendation 12

Centrelink should ensure that its social workers consider a range of options when working with customers who may meet the vulnerability criteria. The social workers should detail the reasons for not pursuing these options when they are making VWPR determinations. These options may include, but are not limited to, weekly payments, financial services, Centrepay, nominee arrangements and Voluntary Income Management.

Response: Agreed

Department social workers consider a range of options when working with customers who meet vulnerability criteria, including those listed above. These tools are used as part of an early intervention approach to prevent customers from further financial hardship. The department social workers recognise that outcomes are likely to be more positive if customers have choices about the type of support they are given, and that level of support is commensurate with their level of need.

Recommendation 13

Centrelink should extend the proposed VWPR decision-making training to Authorised Review Officers who are likely to deal with IM matters to ensure that they address all mandatory considerations and follow policy instructions.

Response: Agreed

Authorised Review Officers who conduct reviews of IM decisions were provided with training in March 2012.

Recommendation 14

FaHCSIA and Centrelink should develop options and guidelines for engaging with customers who are under age or experiencing a loss of capacity. This area of decision making should be incorporated into the Department of Human Service's current project concerning substituted decision making.

Response: Noted

Social workers explore appropriate supports and options for customers who may be underage or experiencing diminished capacity. The findings of the Taskforce and the Ombudsman regarding vulnerable customers will be flagged with the current project concerning substituted decision making.

Recommendation 15

FaHCSIA and Centrelink should amend their policy instructions in accordance with the issues highlighted in this report, including the need to amend the definition of 'failure to undertake reasonable self care' and include the vulnerability indicator of 'homelessness or risk of homelessness' in all relevant sections of e-Reference.

Response: Noted

The Guide to Social Security Law (11.4.2.20) contains a description of 'failure to undertake reasonable self-care'. It states that a failure to undertake reasonable self-

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care may be due to factors including, but not limited to, substance abuse issues, problem gambling, and mental health issues. Centrelink will include these words in the relevant parts of e-Reference.

FaHCSIA is considering how to define 'failure to undertake reasonable self-care' to assist in assessing vulnerability.

Ombudsman comment on the response

The Guide and e-Reference currently contain a non-exhaustive list of the kinds of events and conditions that may cause failure to undertake reasonable self-care, but this is not a definition of that indicator. We suspect that decision makers are acting on information that indicates there is a possible causative factor, such as substance abuse, without then considering whether this factor is actually resulting in failure to undertake reasonable self-care. We are pleased that FaHCSIA is considering how to define this in the Guide.

Recommendation 16

Centrelink should implement a workflow that ensures VWPR assessments cannot be implemented in Centrelink's systems and customers cannot be informed of such decisions until the social worker's VWPR report has been finalised and quality assured.

Response: Noted

The department has implemented a quality assurance process, where only senior social workers (Executive Level 1) are the delegates for VWPR decisions. This means that reports are completed in the main prior to decisions being implemented. The only exception to this occurs when a social worker deems it a matter of emergency to initiate a VWPR during a remote servicing visit and completes the report on return to the office.

Ombudsman comment on the response

We welcome the changes that require these decisions being made at a senior level. We also note the intention for reports to be completed before decisions are implemented, unless there are emergency circumstances. We reiterate our view that the record should be completed and quality assured before any action is taken to apply the VWPR IM measure to a customer.

Quality of letters

Recommendation 17

Just as the Taskforce recommended that reasons be provided to customers who have been refused an exemption because of the FV test, VWPR customers should receive reasons for decisions in their letters.

Response: Agreed

Letters for customers on the VWPR IM measure have been rewritten to include reasons for the decision. These changes are scheduled for the June 2012 system release.

Recommendation 18

While considering the letters across its programs, Centrelink should aim to improve its letters so that they advise customers in clear and simple language:

- of the decision that has been made, including an explanation of the applicable program or measure
- the reason(s) for that decision including relevant evidence
- what the consequences of the decision are for the customer
- what the customer can do about the decision if they disagree with it.

Response: Agreed

IM letters for customers are being reviewed with a focus on readability and consistency of language. Some changes were made in the March 2012 system release and further changes are scheduled for the June and September 2012 system release to incorporate:

- advice about why IM applies and the impact on the customer;
- the reason for the decision;
- the consequences for the customer; and
- what the customer can do if they disagree with the decision.

Recommendation 19

Centrelink should ensure that all VWPR decisions, whether applying, affirming, extending, varying or revoking a VWPR determination, result in a letter to the customer explaining all reconsideration and review options.

Response: Agreed

Changes are scheduled for the June 2012 systems release for letters to be issued for these scenarios and include reconsideration and review options.

Recommendation 20

As we have seen examples of incorrect references to s 192, or erroneous advice that a letter seeking information is a decision letter, in other aspects of IM decision making, Centrelink should take steps to ensure these problems are addressed in all of its IM programs.

Response: Agreed

The review and rewrite of IM letters has addressed this issue across all measures and legal advice has been incorporated to ensure correctness in relation to what are decision letters and what are notice or information letters.

ABBREVIATIONS AND ACRONYMS

AAT	Administrative Appeals Tribunal
Administration Act	<i>Social Security (Administration) Act 1999</i>
ANAO	Australian National Audit Office
ARO	Authorised Review Officer
CIMEW	Compulsory Income Management Exemption Workflow
DHS	Department of Human Services
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FV	Financial vulnerability
FV decision	A decision to refuse to exempt a person from IM who is in the disengaged youth or long-term welfare payment recipient categories, and who has dependent children, on the basis that they do not pass the FV test.
FV test	The test Centrelink uses to determine whether a person showed any indications of financial vulnerability in the 12 months before they applied for an exemption from IM.
IM	Income Management
NM, D&CSB	National Manager, Deduction and Confirmation Services Branch
NT	Northern Territory
NTER	Northern Territory Emergency Response
SSAT	Social Security Appeals Tribunal
SWIS	Social Work Information System
The Principles	<i>Social Security (Administration) (Exempt Welfare Payment Recipients – Persons with Dependent Children) (Indications of Financial Vulnerability) Principles 2010</i> or the <i>Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010</i>
The Taskforce	Centrelink’s Taskforce established in September 2011 to review all FV refusal decisions and 25% of VWPR decisions made between August 2010 and September 2011.
VIM	Voluntary Income Management
VWPR	Vulnerable welfare payment recipient
VWPR decision	A decision to subject a person to IM because a social worker has determined the person comes within the VWPR category.

APPENDIX 1 — TASKFORCE RECOMMENDATIONS

Financial vulnerability recommendations

Taskforce recommendation 1.01

Management – a clear line of control to an Executive Level 2 who is active in the management of the team is needed to execute change and achieve high quality, holistic customer service, based on the legislative framework for each customer.

Taskforce recommendation 1.02

Management – FV cases are potentially complex and involve the use of discretion and, that the managers and assessors in the team require a specialised set of skills. These factors support the continued use of a specialised, centralised team for FV assessments.

Taskforce recommendation 1.03

Recruitment/Selection – staff need to be selected on the basis that they have network/customer service experience, analytical skills and the ability to weigh up complex factors in a formal decision making process. Additionally, current staff need to up-skilled in these areas.

Taskforce recommendation 1.04

Policy Framework – the policy intent for a holistic assessment based on the mandatory decision making principles, with a conclusion drawn about the customer's overall circumstances, be included and clearly explained in all aspects of the policy and procedural framework used by the decision making team.

Taskforce recommendation 1.05

Process design/IT – While the current FV process design is sound, the IT system to support CIMEW requires substantial enhancements to:

- reflect the policy framework and mandatory elements
- allow greater opportunity for recording customer evidence and discussion
- securely record confidential customer information, allowing appropriate access only
- allow staff to leave and re-enter the workflow, thus allowing for better, more timely consideration by decision makers
- allow a summary dialogue box to record findings (a holistic assessment).

Taskforce recommendation 1.06

Process design – all customers on IM and those refused an exemption are considered for a money management course.

Taskforce recommendation 1.07

Use of interpreters – more investigation be undertaken on the availability and appropriate use of interpreters.

Taskforce recommendation 1.08

FV letters – the exemption rejection reason should be included in the FV exemption rejection letters.

Taskforce recommendation 1.09

FV letters – customers' appeal and review rights be included in the rejection decision letters (this was action on 24 and 25 September 2011).

Taskforce recommendation 1.10

FV letters – the ambiguity about the nature of the letter (a decision or request for information) be resolved in the December system release.

Taskforce recommendation 1.11

Training – training material should be re-written to provide a strong focus on the need to consider:

- the mandatory decision making elements from the legislation
- positive and negative indicators of FV
- a holistic assessment
- the referral process for money management courses to help customers off IM.

Taskforce recommendation 1.12

Training – training on decision making skills should be delivered to the team. It should be mandated that this formal training be completed prior to team members making FV exemption decisions.

Taskforce recommendation 1.13

Quality framework – develop a new Quality Framework for all FV exemption assessments.

Vulnerable Welfare Payment Recipient recommendations

Taskforce recommendation 2.01

Management – all NT social workers should undergo formal, appropriate training for IM and VWPR assessments, before they undertake any assessments (see recommendation 2.07 below).

Taskforce recommendation 2.02

Management – consideration should be given to establishing a social worker support team, headed by a social worker and staffed by administrative staff to:

- contact relevant community organisations
- follow through with agreed action plans
- follow through with customers on actions in agreed plans.

Taskforce recommendation 2.03

Process design – the VWPR workflow should be enhanced to:

- align with the legislative framework and lead decision makers through the correct process
- include historical information about well-being and other relevant factors
- provide for the recording of the reasons and steps in progressing a customer to VWPR and allow for updates to recorded information as new information is obtained
- include a facility in the report format to switch from ‘apply’ to ‘reject’
- ensure that the decision making principles for both initial assessments and reviews are separately reflected in the recording and report formats
- cease un-necessary 3 and 6 month VWPR entitlement reviews
- record well-being review outcomes clearly and separately.

Taskforce recommendation 2.04

VWPR letters – review, consolidate and improve the letters that are automatically generated for VWPR processes at both the entitlement and review stage. A focus of the review should be on the removal of duplicate letters.

Taskforce recommendation 2.05

Use of interpreters – more investigation to be undertaken on the availability and appropriate use of interpreters.

Taskforce recommendation 2.07⁷³

Training – develop a comprehensive nationally endorsed training package for all social workers who will be involved in VWPR assessments and income management measures generally. On the job training is not considered adequate for this purpose. The modules in the training package need to clearly reflect the legislation and related decision making principles.

Taskforce recommendation 2.08

Quality framework – the existing quality framework tool be revised, endorsed by the National Payment and Accuracy Branch and its use mandated and rolled out to all social workers undertaking VWPR assessments.

⁷³ The Taskforce's report does not include a recommendation 2.06.