



Australian Government

Department of Families, Housing,  
Community Services and Indigenous Affairs

Ms Naomi Bleeser  
Committee Secretary  
Senate Standing Committee on Community Affairs  
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Canberra ACT 2600  
Australia

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Dear Ms Bleeser

**Inquiry into the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009.***

I am writing to supplement FaHCSIA's answer to Question No WR 3, in which Senators Moore and Boyce sought details of appeal rights in relation to income management decisions under Part 3B of the *Social Security Administrative Act 1999* (the Administration Act).<sup>1</sup>

FaHCSIA's answer included the following statement:

As a result of [amendments made by Item 1 of Schedule 2 of the *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009*], a 'decision of an officer' (within the meaning of paragraph 140(1)(a) of the Administration Act) that was made under Part 3B of the Administration Act, on or after 24 June 2009, in relation to a person who is subject to the income management regime under the current Northern Territory income management measure is able to be reviewed by the SSAT, and by the AAT (provided that the SSAT has reviewed it first).

I advise that, in appeals D20607 and D20608 (determined together on 11 January 2010, and first received in FaHCSIA on 29 January 2010), the Social Security Appeals Tribunal (SSAT) took a more limited view of the appeal rights referred to in this answer.

FaHCSIA's view was, and remains, that *any* 'decision of an officer' under Part 3B of the Administration Act made on or after 24 June 2009, including a decision on or after that date to refuse an exemption<sup>2</sup> from income management, was reviewable under the

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<sup>1</sup> Question No WR 3, and the response, may be found at:

[http://www.aph.gov.au/senate/committee/clac\\_ctte/soc\\_sec\\_welfare\\_reform\\_racial\\_discrim\\_09/submissions/QoN3F.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/QoN3F.pdf).

<sup>2</sup> Under section 123UG (in Part 3B) of the Administration Act.

amendments made by Item 1 of Schedule 2 of the *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009*, even if the person concerned first became subject to income management before 24 June 2009.

However, the view of the SSAT expressed in appeals D20607 and D20608 was that the affected person could only seek review if *both* the decision to refuse the exemption, *and* the initial application of income management to the person, occurred on or after 24 June 2009. The difference in views turned on the interpretation of a transitional provision.

Should the issues considered in appeals D20607 and D20608 go before the SSAT again, FaHCSIA will make submissions in support of its interpretation (which gives a broader range of review rights).

However, we are not aware of any similar matter pending before the SSAT, and Part 3B of the Administration Act has since been substantially amended (effective 1 July 2010) by the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*. These amendments confer a new set of review rights and mean that it is unlikely (although not impossible) that the particular provisions considered in appeals D20607 and D20608 will come before the SSAT again.

Yours sincerely

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Legal and Compliance

20<sup>th</sup> July 2010