

## EXPLANATORY STATEMENT

### ***Social Security (Administration) (Specified income management Territory – Northern Territory) Specification 2012***

The *Social Security (Administration) (Specified income management Territory – Northern Territory) Specification 2012* (the Specification) is made under subsections 123UCB(4) and 123UCC(4) of the *Social Security (Administration) Act 1999* (the Act). The Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform, as well as making the Determination in her own capacity, is also making it on behalf of the Minister for Employment and Workplace Relations and the Minister for Tertiary Education, Skills, Science and Research.

#### **Background**

As part of the Building Australia's Future Workforce package, income management was introduced into five new sites on 1 July 2012. The income management measures introduced included:

- people referred for income management by State child protection authorities, where they assess that a child is at risk of neglect (the child protection measure);
- people assessed by Centrelink Social Workers as being vulnerable by reference to factors including financial crisis and risk of homelessness (vulnerable welfare payment recipient measure); and
- people who volunteer for income management (voluntary income management).

Each measure was commenced by separate instrument. The vulnerable welfare payment recipient measure was commenced by declaring the areas as 'declared income management areas' (under the *Social Security (Administration) (Declared income management areas) Determination 2012*). However, the current provisions of the Act result in such declaration also commencing income management measures applying to disengaged youth and long-term welfare payment recipients.

Legislative change had previously been proposed to allow these measures to be separately declared. The *Social Security Legislation Amendment Bill 2011* was introduced into Parliament on 23 November 2011, proposing, at Part 2 of Schedule 1 to the Bill, separation of the three measures currently jointly commenced by declaring an income management area. That Bill received Royal Assent on 29 June 2012. Schedule 1 to the *Social Security Legislation Amendment Act 2012* commences 28 days after Royal Assent. Upon commencement of this Schedule, the power to declare a 'declared income management area' in section 123TFA of the Act will be repealed, and replaced by powers for the Minister to specify, by legislative instrument, a State, a Territory or an area for the separate purposes of each of the three income management measures.

A consequence of this repeal is that the current declared income management areas in each of New South Wales, Queensland, South Australia, Victoria and the Northern Territory will lapse. These areas must be specified by newly made legislative instruments to continue the current income management measures applying in each area.

## **Purpose**

This Specification specifies the Northern Territory in order to continue the currently applying disengaged youth and long-term welfare payment recipient income management measures in the Territory.

The Specification is a legislative instrument and commences on 27 July 2012 being the commencement of Schedule 1 to the *Social Security Legislation Amendment Act 2012*.

## **Explanation of the Provisions**

Section 1 states the name of the Specification.

Section 2 provides that the Specification commences on 27 July 2012.

Section 3 provides definitions for terms that are used in the Specification. Any references to the **Act** are references to the *Social Security (Administration) Act 1999*.

Sections 4 and 5 specify the Northern Territory for the purposes of the disengaged youth measure and the long-term welfare payment recipient measure.

## **Consultation**

No new consultation with the Territory has been undertaken because the Specification gives continuing effect to existing income management arrangements.

Consultation on the Specification was undertaken with the Department of Employment and Workplace Relations and with the Department of Industry, Innovation, Science, Research and Tertiary Education.

### **Regulatory Impact Analysis**

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

## Statement of Compatibility with Human Rights

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

### ***Social Security (Administration) (Specified income management Territory – Northern Territory) Specification 2012***

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

#### ***Overview of the Legislative Instrument***

Part 3B of the *Social Security Administration Act (1999)* (the Act) establishes an income management regime that applies to recipients of certain welfare payments.

People in the Northern Territory who are in receipt of social security payments for an extended period, and are not undertaking an approved activity, may be eligible for the Long-Term Welfare Payment Recipient or Disengaged Youth measures of income management. The Long-Term Welfare Payment Recipient Measure is directed at people aged 25 and over who have been in receipt of income support and family assistance payments for over 12 months. The Disengaged Youth Measure is directed at people aged between 15 and 24 years who have been receiving welfare payments for an extended period. These measures target people at higher risk of disengagement from economic and social participation.

If a person is subject to the Long-Term Welfare Payment Recipient Measure or the Disengaged Youth measure of income management under Part 3B of the Act, the Secretary will deduct 50% of the person's relevant welfare payments and credit those amounts to the person's income management account. The Secretary may then debit amounts from the person's income management account, in accordance with Part 3B of the Act, for the purpose of taking actions directed to meeting the priority needs of the person or his or her dependants.

The *Social Security (Administration) (Specified income management Territory – Northern Territory) Specification 2012* (the 2012 Specification) specifies the Northern Territory as a Disengaged Youth income management territory and a Long-Term Welfare Payment Recipient income management territory. The 2012 Specification will replace the existing specification but does not change the operational area of these measures or the number of people eligible for income management. The *Social Security Legislation Amendment Act 2012* amended the provisions of the Act allowing the Minister to declare an income management area. The 2012 Specification is necessary to

continue income management in the Northern Territory, but will not impact on the operation of the income management scheme in any way.

### ***Human rights implications***

The 2012 Specification will not increase the number of people eligible for the Long-Term Welfare Payment Recipient Measure and the Disengaged Youth Measure of income management, so it will not increase the impact on social security recipient's human rights. This 2012 Specification is to ensure the continued operation of income management in the Northern Territory after the commencement of the *Social Security Legislation Amendment Act 2012*. To the extent that the 2012 Specification continues the Long-Term Welfare Payment Recipient Measure and the Disengaged Youth Measure of income management in the Northern Territory, it is consistent with human rights. These measures of income management limit a person's human rights to a reasonable extent that supports the enjoyment of these rights

#### The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognised *'the right of everyone to social security, including social insurance'*. That right requires a country to, within its maximum available resources, provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. People subject to income management retain the same right to social security while being provided a mechanism to acquire the essential items outlined in Article 9 of the ICESCR. The requirement to allocate a percentage of their social security payments on the maintenance of the child via food, clothing and housing supports this right.

#### The right to an adequate standard of living

Article 11.1 of the ICESCR states that everyone has the right to *'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'* and that *'appropriate steps'* be taken to *'ensure the realization of this right'*. Further to this, article 11.2 of the ICESCR states that *'measures, including specific programmes,'* should be taken in *'recognizing the fundamental right of everyone to be free from hunger'*. Through the Disengaged Youth Measure and Long-term Welfare Payment Recipient Measure of income management, 50 per cent of a person's income support and family payments are directed to pay for life's essentials. Income management is a tool to stabilise people's circumstances and ease immediate financial stress. It supports this right by ensuring that money is available for priority goods such as food, clothing and housing, and providing a tool to help.

## The right to self-determination

Article 1 of the ICESCR states that *'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'*.

Income management does not impact a person's political status. It directs 50 per cent of their social security payments towards priority goods and services such as food and rent and prohibits that portion of their payments being spent on excluded items such as alcohol, tobacco, pornography and gambling. These spending constraints do not impact a person's right to pursue their economic, social or cultural development. In assisting people to meet their priority needs, income management provides people with more financial stability, so they can better pursue their economic, social and cultural development.

## The limitation of Rights under the ICESCR

Article 4 of the ICESCR provides that a State may limit the rights outlined in the Convention *'only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'*.

As noted in the above paragraphs, the Specification, in supporting the application of the income management, does not unreasonably limit a person's rights to dispose of their resources. The purpose of these limitations is to help people stabilise their circumstances and address financial issues. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

## Conclusion

The 2012 Specification is compatible with human rights. It protects human rights by ensuring that 50 per cent of the income support payments of people are directed towards meeting their priority needs. This limitation is reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

**The Hon. Jenny Macklin, Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform**