

EXPLANATORY STATEMENT

Social Security (Administration) (Declared income management area — Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012

The *Social Security (Administration) (Declared income management area — Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012* (the Determination) is made under paragraph 123TGA(c) and subsection 123UCA(3) 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

Following consultations with Anangu Pitjantjatjara Yankunytjatjara (APY) communities, the Australian Government announced that income management will be introduced into the APY Lands on 1 October 2012, utilising the same model that was introduced into five sites across Australia on 1 July 2012 as part of the Government's *Building Australia's Future Workforce* (BAFW) package. The BAFW sites demonstrated a high level of disadvantage, based on a number of key factors, including unemployment levels, youth unemployment, the number of people receiving welfare payments, and the length of time people have been on income support. The level of disadvantage facing people in the APY Lands based on these factors is greater, and other available data highlights the significant overall disadvantage in the APY Lands. Income management seeks to address that disadvantage.

Income management will apply to vulnerable families and individuals in the BAFW communities and the APY Lands, including:

- people referred for income management by State child protection authorities, where they assess that a child is at risk (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).

The child protection measure already applies in the APY Lands as the whole of South Australia was declared a child protection State for the purposes of income management by the *Social Security (Administration) (Declared child*

protection State — New South Wales, Queensland, South Australia and Victoria) Determination 2012.

This determination gives effect to the vulnerable welfare payment recipient measure and voluntary income management in the APY Lands.

Purpose

This Determination specifies the APY Lands as a declared voluntary income management area under s 123TGA . It also specifies the APY Lands for the purposes of paragraph 123UCA(1)(b) as an area in which the vulnerable welfare payment recipient measure applies under s 123UCA(3).

The Determination is a legislative instrument and commences on 1 October 2012.

Explanation of the Provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on 1 October 2012.

Section 3 provides definitions for terms that are used in the Determination. Any references to the **Act** are references to the *Social Security (Administration) Act 1999*. **The lands** means the lands described in Schedule 1 to the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA).

Section 4 declares the APY Lands as a declared voluntary income management area for the purposes of Part 3 of the Act.

Section 5 specifies the APY Lands for the purposes of paragraph 123UCA(1)(b), to commence the vulnerable income management measure.

Consultation

In May and June 2012, officers from the Department of Families, Housing, Community Services and Indigenous Affairs talked with people in the APY Lands about how income management might help people and what model would work best on the APY Lands. These consultations found that people in the APY Lands were, on the whole, in favour of the introduction of income management. The community's opinions were communicated back to the Australian Government Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP.

The Commonwealth is undertaking regular meetings with stakeholders in the APY Lands with a particular focus on income management.

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

Regulatory Impact Analysis

The Determination 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

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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. If a person is subject to the income management regime under Part 3B, the Secretary will deduct amounts from 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, for the purpose of taking actions directed to meeting the priority needs of the person or his or her dependants.

The purpose of this instrument is to declare the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands for the purposes of the vulnerable and voluntary income management measures in Part 3B of the Act.

The effect of the Determination is that once the APY Lands is specified for the purposes of paragraph 123UCA(1)(b), a person residing in that area, who is in receipt of a category H welfare payment, may be required to be subject to the income management regime. If the various criteria in section 123UCA(1) are satisfied (including that the person is considered a vulnerable welfare payment recipient), a portion of the person's relevant welfare payments will be redirected to the priority needs, such as food, clothing and shelter, of the person and his or her dependants. Also, once the APY Lands is a declared voluntary income management area, a person residing in that area, who is in receipt of a category H welfare payment, may be eligible to enter into a voluntary income management agreement, under which that person agrees voluntarily to be subject to the income management regime for a particular period.

The key objectives of income management under the Act are to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependants,
- help affected welfare payment recipients to budget so that they can meet their priority needs,
- reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography,
- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments, and
- encourage socially responsible behaviour, particularly in the care and education of children.

Human rights implications

The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises *'the right of everyone to social security, including social insurance'*. The UN Committee on Economic, Social and Cultural Rights has stated that implementing this 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'.

Income management does not reduce the amount of a person's social security entitlement. Rather, it provides a mechanism to ensure that certain recipients of social security entitlements use a proportion of their entitlement to acquire essential items, including all of those referred to by the UN Committee. The UN Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'.

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 income management, 50 per cent of a person’s income support and family payments are directed to pay for life’s essentials. Income management does not limit a person's right to an adequate standard of living. Instead, it aims to advance this right by ensuring that money is available for priority goods such as food, clothing and housing, and provides a tool to help people budget. Income management can also help people stabilise their lives, so they can care for their children, and join or return to the workforce.

The rights of children

By ensuring that a portion of income support payments are used to cover essential goods and services, income management can improve living conditions for the children of income support recipients. It thereby advances the right of children to benefit from social security, the right of children to the highest attainable standard of health and the right of children to adequate standards of living (arts 26, 24 and 27 of the Convention on the Rights of the Child, respectively).

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’*. This right is relevant because the majority of people who live in the APY Lands are Indigenous.

The expansion of income management in the APY Lands will not affect the means of subsistence or political status of any person or group, but will require that 50 per cent of the social security payments of persons subject to the income management regime must be spent on priority goods and services such as food and rent. Whilst income management does limit a person’s ability to freely dispose of all of their social security benefit it does not impact on their right to freely pursue their economic, social or cultural development. The limitation under income management on how social security benefits may be spent is to ensure that the essential needs of vulnerable people are met and that they are protected against risks of homelessness and financial exploitation.

The people in the APY Lands were consulted about how income management might help people and what model would work best on the APY Lands. These consultations found that people in the APY Lands were, on the whole, in favour of the introduction of income management.

The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided for in a number of the seven core international human rights treaties to which Australia is a party, most relevantly the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (the CERD). In particular, Article 5 of the CERD requires parties 'to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law', notably in the enjoyment of 'the right to ... social security and social services' (Article 5(e)(iv)).

Discrimination is impermissible differential treatment among persons or groups that result in a person or a group being treated less favourably than others, based on a prohibited ground for discrimination, such as race. However, the UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.

The Determination does not in its terms discriminate on the basis of race. But it is acknowledged that the population of the APY Lands is predominantly Indigenous (approximately 85%), and therefore that the effect of the Determination is likely to be greater on Indigenous people.

However, the APY Lands are only one of the geographical areas in which income management has been introduced. It was also introduced in five sites across Australia on 1 July 2012 as part of the Government's *Building Australia's Future Workforce* (BAFW) package. The BAFW sites demonstrated a high level of disadvantage, based on a number of key factors including unemployment levels, youth unemployment, skills gaps, educational achievement, the number of people receiving welfare payments, and the length of time people have been on income support payments.

These factors were used to assess whether income management measures should also be applied to the APY Lands. They are reasonable, objective, and non-race based criteria. Against these criteria, the levels of disadvantage is greater in the APY Lands than at the five BAFW sites. The benefits of income management for people in the APY Lands are the same as the benefits for people at the five BAFW sites. Additional data also highlights the significant overall disadvantage of people in the APY Lands and the benefits of introducing income management there.

Further, the vulnerable welfare payment recipient measure and voluntary income management apply in the same way to any person receiving a social security payment, regardless of whether the person is in the APY Lands or one of the five BAFW locations. These criteria are also reasonable, objective and not based on race.

Further, consultations have found that people in the APY Lands were, on the whole, in favour of the introduction of income management. Protections and review rights are in place under the scheme.

The introduction of the vulnerable welfare payment recipient measure and voluntary income management measure in the APY Lands are therefore reasonable and non-discriminatory measures. They have been introduced on the basis of reasonable and objective criteria, which have been used in relation to other areas, and which reveal the significant disadvantage of people in the APY Lands. The measures aim to ensure that vulnerable individuals and families in the APY Lands have adequate food, housing and utilities, which is a legitimate purpose.

Conclusion

The *Social Security (Administration) (Declared income management area — Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012* is compatible with human rights. Income management will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients whilst also helping to improve their budgeting skills so they can meet their priority needs. To the extent that it may limit human rights those limitations are 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 MP, Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform