

## EXPLANATORY STATEMENT

### ***Social Security (Administration) (Recognised State/Territory Authority — NT Alcohol Mandatory Treatment Tribunal) Determination 2013***

#### **Summary**

The *Social Security (Administration) (Recognised State/Territory Authority — NT Alcohol Mandatory Treatment Tribunal) Determination 2013* (the **Determination**) is made for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (the **Act**).

The Determination is made by the Minister for Social Services.

#### **Background**

##### *Income Management*

Income management, set up under Part 3B of the Act, aims to support vulnerable individuals. A person subject to income management has an income management account. A proportion of the person's welfare payments are directed to the person's income management account. Income managed funds cannot be used for excluded items, such as alcohol, tobacco, pornography and gambling products. Amounts may be debited from the person's income management account for the purposes of enabling the Secretary to take action directed towards meeting the priority needs of the person and/or the person's children if appropriate.

Part 3B of the Act currently includes, among other things, measures to income manage individuals referred by a child protection officer, long-term recipients of welfare payments, disengaged youth, people assessed as vulnerable and people who voluntarily opt-in to income management.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to income management. Section 123UFAA provides that a person is subject to income management at a particular time (the test time) if, among other things, before the test time, an officer or employee of a recognised State/Territory authority has given the Secretary a written notice requiring that the person be subject to income management, and, at the test time, the State or Territory is a recognised State or Territory.

The term recognised State/Territory authority has the meaning given by section 123TGAA of the Act. Subsection 123TGAA(1) provides that the Minister may, by legislative instrument, determine that a specified department, part of a department, body or an agency of a State or Territory is a recognised State/Territory authority for the purposes of Part 3B.

## *The Tribunal*

The NT Alcohol Mandatory Treatment Tribunal (the ***Tribunal***) was established from 1 July 2013 under section 102 of the *Alcohol Mandatory Treatment Act 2013*(NT) (the ***NT Act***). The objects of the NT Act include assisting and protecting misusers of alcohol by:

- stabilising and improving their health;
- improving their social functioning through appropriate therapeutic and other life and work skills interventions;
- restoring their capacity to make decisions about their alcohol use and personal welfare;
- improving their access to ongoing treatment to reduce the risk of relapse.

The Tribunal has been established to assist and protect these persons by providing for their mandatory assessment, treatment and management. In particular, and in addition to the Tribunal's other powers and functions, the Tribunal has the authority to:

- make a mandatory treatment order, requiring the person to undertake mandatory alcohol treatment in a prescribed residential treatment centre for up to 3 months; and
- refer the person to income management by giving an income management order.

Prior to the Tribunal coming into being, the treatment and management of persons misusing alcohol was managed by the NT Alcohol and Other Drugs Tribunal which was established on 1 July 2011 under the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* (NT) (the ***Repealed Act***).

While the NT Act repealed the Repealed Act, it contains transitional provisions (in Part 8) relating to notices referring a person to income management that were previously given under the Repealed Act. In particular, such notices will continue in force in accordance with their terms and the Tribunal will have all of the powers and functions the NT Alcohol and Other Drugs Tribunal had immediately before commencement of the NT Act.

A savings provision in the Determination ensures that persons placed on income management as a result of an order given by the NT Alcohol and Other Drugs Tribunal will continue to remain on income management, subject to the other requirements of the Act.

## **Purpose**

The purpose of the Determination is to determine that the Tribunal is a recognised State/Territory authority for the purposes of Part 3B of the Act. The Determination also revokes the *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012* that recognised the NT Alcohol and Other Drugs Tribunal, which preceded the Tribunal.

As a recognised State/Territory authority, an officer or employee of the Tribunal may give the Secretary a written notice requiring that a person be subject to income management under section 123UFAA of the Act.

The Determination is a legislative instrument.

## **Explanation of Provisions**

**Section 1** states the name of the Determination.

**Section 2** states that the Determination commences on the day after the Determination is registered.

**Section 3** provides that the *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012* is revoked.

**Section 4** saves the operation of any notices given by the Tribunal formerly established under the Repealed Act, to the extent that any notices continue in force at the commencement of this Determination, and remain in force after that time.

**Section 5** contains definitions that are used in the Determination.

**Section 6** provides that the NT Alcohol Mandatory Treatment Tribunal is a recognised State/Territory authority for the purposes of Part 3B of the Act.

## **Consultation**

Consultation on the Determination was undertaken with the Northern Territory Department of Health as well as the Commonwealth Department of Human Services as the service delivery agency.

## **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*

This Legislative Instrument is the *Social Security (Administration) (Recognised State/Territory Authority — NT Alcohol Mandatory Treatment Tribunal) Determination 2013* (the **Determination**).

The Determination 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**

Section 123TGAA *Social Security (Administration) Act 1999* (the Act) provides that the Minister may, by legislative instrument, determine that a specified department (or part of a department), a body or an agency of a State or Territory is a recognised State/Territory Authority for the purposes of Part 3B of the Act. The Determination is made under this section, specifying the Alcohol Mandatory Treatment Tribunal (the Tribunal) as a recognised Territory Authority.

The Tribunal was established on 1 July 2013 as part of the Alcohol Mandatory Treatment Reform. It has authority to refer people, who have been taken into police custody three or more times in two months as a result of public intoxication, for mandatory treatment or other community management. This may include treatment in a secure residential treatment service or a community residential treatment service (where secure treatment is not warranted or available), or other community management including income management.

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.

Under this measure of income management 70 per cent of a person's income support payment is directed towards priority items, such as food, housing, clothing and utilities, and cannot be spent on alcohol, tobacco, pornographic material and gambling products. This measure assists the referred person to address alcohol and substance misuse issues.

### *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*'. That right requires a country to, within its maximum available resources, provide access to benefits, whether in cash or in kind, in order to secure protection from:

- lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;
- unaffordable access to health care; and
- insufficient family support, particularly for children and adult dependants.

Income management does not impair or limit a person's right to social security. Income management has no impact on the amount of social security a person is entitled to receive, but provides a mechanism to ensure that identified recipients of social security entitlements use a proportion of their entitlement (in this case 70 per cent) to acquire essential items for self-maintenance and to support their dependants, and prevents them from using these funds for excluded goods, specifically alcohol, tobacco, pornography or gambling.

This spending limitation supports the objective of this human right, as it ensures people direct a proportion of their funds to secure protection against deprivation for themselves and their dependants.

### *Conclusion*

#### 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 this measure of income management, 70 per cent of a person's income support and family payments are directed to pay for life essentials. Income management is a tool to stabilise a person's circumstances and ease immediate financial stress. It ensures that money is available for priority goods such as food, clothing and housing, and provides assistance to help people to budget. Income management supports this right by ensuring people have appropriate resources available to maintain an adequate standard of living, by ensuring a proportion of their welfare payments are directed towards the essential items specified in this part of the convention.

#### The rights of children

By ensuring that a portion of welfare payments are used to cover essential goods and services, income management can improve living conditions for the children of welfare payment recipients. It 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 International 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'*.

Under this measure 70 per cent of a person's welfare payments must be spent on priority goods and services such as food and rent. While this measure does limit a person's ability to freely dispose of all of their resources, it does not impact on their right to freely pursue their economic, social or cultural development. This limitation is to ensure that the essential needs of vulnerable people are met, and provide them 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 income management scheme enabled by the Determination does not unreasonably limit a person's rights to freely dispose of their resources. The purpose of these limitations is to help people stabilise their circumstances and address issues of vulnerability, particularly substance abuse issues. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

### The rights to privacy

Article 17 of the ICCPR provides that *no one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence...*

Income management does not unnecessarily impact on a person's privacy. Information sharing protocols between the Department of Human Services and the Tribunal are drafted to ensure that personal information is appropriately managed. Income management is not an unlawful interference with a person's privacy or family, as the income management program complies with both National and international laws.

### The rights of persons of a particular race or ethnic origin

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

This has been further explained in General Recommendation 14 (ICERD) that "a distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. Differential treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purpose of the Convention, are legitimate or fall within the scope of article 1.4. An action will be contrary to the convention if it is an "unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin".

The objective of this Determination, is to provide the Northern Territory Government with a tool to assist with alcohol abuse in Northern Territory communities. This will be achieved by preventing people with clinically assessed alcohol issues from using 70 per cent of their welfare payments to purchase alcohol, and ensure this amount is used to purchase priority goods and services such as food, rent, utilities and health-care. This measure will also provide budgeting support so individuals can manage and improve their circumstances.

As noted in this Statement, the measure of income management enabled by this Determination does not impair any person's enjoyment of human rights, so it cannot be considered racially discriminatory. However, to the extent that this measure of income management may have a greater impact on the human rights of people of a certain race or ethnic background (i.e. if the measure can be characterised as indirectly discriminatory in its application), it is a reasonable and proportionate measure aimed at achieving a legitimate objective.

If the Tribunal makes a mandatory treatment order for a person, that person will be referred to the Department of Human Services for income management. The Tribunal will ensure people will only be referred for treatment (and for income management) where it is a reasonable and proportionate response to the person's circumstances. A person taken into protective custody three or more times over a two month period for being intoxicated in public is referred to the Tribunal. The Tribunal will assess the person's situation and determine whether a mandatory treatment order is an appropriate treatment response. Through this process, income management will only be applied by a Tribunal of specialists exercising their professional judgement.

Income management is an appropriate mechanism to assist in preventing people, referred by the Tribunal for mandatory treatment, from relapsing into alcohol abuse. Individuals referred to income management by the Tribunal can ask the Tribunal to reconsider their circumstances, and can appeal the decision to the relevant Northern Territory authority.

The requirement that a portion of a person's income managed funds be directed to essential goods is compatible with the rights outlined in the ICESCR and is intended to promote general welfare.

### *Conclusion*

The measure of income management enabled by this Determination only limits a person's freedom of expenditure where it is reasonable, necessary and proportionate to achieving a legitimate objective. The measure will assist in the protection of human rights by ensuring income management assists people suffering from alcohol abuse. This Determination will assist the Northern Territory Government to reduce hardship and deprivation for people suffering alcohol abuse issues and their dependants, and assist in encouraging socially responsible behaviour.

**The Hon Kevin Andrews MP, Minister for Social Services**