

EXPLANATORY STATEMENT

Social Security (Administration) (Specified vulnerable and declared voluntary income management areas) Amendment Determination 2013

Summary

The *Social Security (Administration) (Specified vulnerable and declared voluntary income management areas) Amendment Determination 2013* (the **Amendment Determination**) is made for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (the **Act**).

The Amendment Determination is made by the Minister for Social Services.

Background

The Local Government area of Rockhampton, in Queensland is currently a specified area for the vulnerable measure of income management and a declared area for voluntary income management. These income management measures were introduced from 1 July 2012 as part of the Building Australia's Future Workforce package.

As the result of recent Queensland government initiatives, the current local government area of Rockhampton is being divided into two local government areas from 1 January 2014, called Rockhampton and Livingstone. In order to continue income management measures currently applying in the same geographical area, the new local government area of Livingstone must be specified for the vulnerable measure of income management, and declared for voluntary income management from 1 January 2014.

Purpose

The purpose of the Amendment Determination is to amend the *Social Security (Administration) (Vulnerable income management areas) Specification 2012* and the *Social Security (Administration) (Declared voluntary income management areas — New South Wales, Queensland, South Australia and Victoria) Determination 2012*, to add the local government area of Livingstone from 1 January 2014.

The Amendment Determination is a legislative instrument.

Explanation of Provisions

Section 1 states the name of the Amendment Determination.

Section 2 states that the Amendment Determination commences on 1 January 2014.

Section 3 provides that Schedule 1 to the Amendment Determination amends the *Social Security (Administration) (Vulnerable income management areas) Specification 2012*.

Section 4 provides that Schedule 1 to the Amendment Determination amends the *Social Security (Administration) (Declared voluntary income management areas — New South Wales, Queensland, South Australia and Victoria) Determination 2012*.

Schedule 1 inserts Livingstone as a local government area in which vulnerable income management applies.

Schedule 2 inserts Livingstone as a local government area in which voluntary income management applies.

Consultation

Consultation on the Determination was undertaken with the Commonwealth Department of Human Services as the service delivery agency and the Commonwealth Department of Employment.

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 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, such as food, clothing and shelter.

Under section 123UCA of the Act a person will be subject to the vulnerable welfare payment recipient measure of income management (the vulnerable measure) if they fulfil certain criteria. One of these criteria is that the person's usual place of residence is within a State, a Territory or an area specified in a legislative instrument.

Similarly, if a person wants to volunteer for voluntary income management under section 123UM of the Act, that person's usual place of residence must be within a *declared voluntary income management area*. The Minister may, by legislative instrument, determine that an area is a *declared voluntary income management area* under section 123TGA of the Act.

The purpose of the *Social Security (Administration) (Specified vulnerable and declared voluntary income management areas) Amendment Determination 2013* is to specify, under sections 123UCA and 123TGA of the Act, that the vulnerable and voluntary measures of income management will operate in the Rockhampton and the Livingstone local government areas (LGAs). This will ensure the uninterrupted operation of income management in the area currently designated as the Rockhampton LGA.

Human rights implications

The Determination was drafted to address LGA changes made by the Queensland Government, and will not alter the geographical area where the vulnerable and voluntary measures of income management operate. To the extent that the Determination continues the operation of the vulnerable and voluntary measures of income management, it is consistent with human 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, within its maximum available resources, to 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 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 50 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.

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, 50 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 50 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. 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.

Conclusion

The Determination is compatible with human rights. It protects human rights by ensuring that 50 per cent of the income support payments of vulnerable people, and people who volunteer for income management, 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 Kevin Andrews MP, Minister for Social Services