

## EXPLANATORY STATEMENT

### ***Social Security (Administration) (Declared income management areas — Ceduna and Surrounding Region) Determination 2014***

The *Social Security (Administration) (Declared income management areas — Ceduna and Surrounding Region) Determination 2014* (the Determination) is made under paragraph 123TGA(c) and subsection 123UCA(3) of the *Social Security (Administration) Act 1999* (the Act).

#### **Background**

Following consultations with communities of the Ceduna local government area and surrounding region (“the Ceduna and Surrounding Region”), the Australian Government announced, in the 2014-15 Federal Budget, that income management will be introduced into the Ceduna and Surrounding Region on 1 July 2014.

Income management in the Ceduna and Surrounding Region will follow 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, and later expanded into the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands of South Australia and the Ngaanyatjarra (Ng) Lands and Laverton in Western Australia.

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 Ceduna and Surrounding Region is similar to the level of disadvantage experienced by people in the BAFW sites.

Income management will apply to vulnerable families and individuals in the Ceduna and Surrounding Region, 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 classified as vulnerable welfare payment recipients, including those vulnerable to financial hardship, economic abuse or financial exploitation and homelessness/risk of homelessness, and young people on the unreasonable to live at home rate of payment, or those leaving custody and receiving a crisis payment; and
- people who volunteer for income management (voluntary income management).

The child protection measure already applies in the Ceduna and Surrounding Region 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*. The commencement of referrals in this area will be by agreement with the South Australian Government.

This Determination gives effect to the vulnerable welfare payment recipient measure and voluntary income management in the Ceduna and Surrounding Region.

## **Purpose**

This Determination specifies the Ceduna and Surrounding Region, consisting of the Ceduna local government area and regions in South Australia west of Ceduna and south of the APY lands, as declared voluntary income management areas under paragraph 123TGA(c) of the Act. It also specifies these locations under subsection 123UCA(3) of the Act for the purposes of paragraph 123UCA(1)(b) as areas in which the vulnerable welfare payment recipient measure applies.

The Determination is a legislative instrument and commences on 1 July 2014.

## **Explanation of the Provisions**

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

**Section 2** provides that the Determination commences on 1 July 2014.

**Section 3** provides definitions for terms that are used in the Determination.

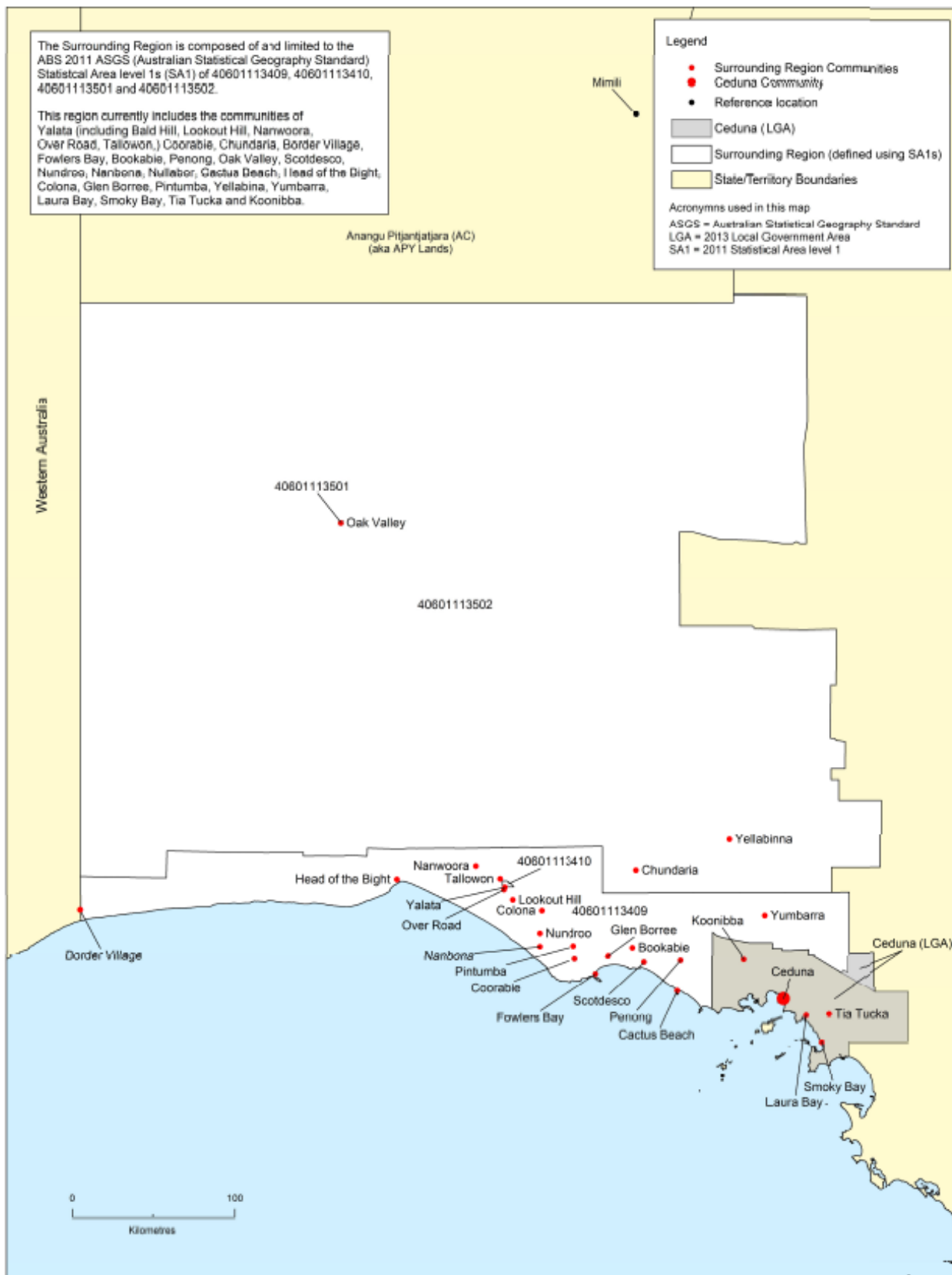
Any references to the **Act** are references to the *Social Security (Administration) Act 1999*.

**Ceduna** is defined as the area of the District Council of Ceduna defined in accordance with the *Local Government Area Act 1999* (SA). This area is commonly referred to as the Ceduna local government area.

**Surrounding Region** is defined as the area composed of and limited to the Australian Bureau of Statistics' 2011 Australian Statistical Geography Standard (ASGS) Statistical Area Level 1s (SA1) of 40601113409, 40601113410, 40601113501 and 40601113502.

This description identifies areas in South Australia west of Ceduna and south of the APY lands, as depicted in the map below:

# Ceduna and the Surrounding Region



Based on ASGS 2011 Statistical Area level 1 (SA1) and 2013 Local Government Area (LGA) boundaries. Boundaries sourced from the Australian Bureau of Statistics.

Authorised by Welfare Payments Reform Branch, DSS  
 Produced by the Data and Modelling Branch, DSS  
 Published on 21 May 2014  
 Map is for illustrative purposes only.  
 Ref: DR7930  
 (c) Commonwealth of Australia, 2014

The geographical boundaries of SA1 areas in the ASGS can also be viewed using the online tool provided by the Australian Bureau of Statistics (ABS) available at:

<http://betaworks.abs.gov.au/betaworks/betaworks.nsf/projects/ASGSBoundariesOnline/frame.htm>.

As at the commencement of this Determination, the Surrounding Region includes the communities of Bald Hill, Betts Corner, Bookabie, Border Village, Bulinda, Cactus Beach, Ceduna, Ceduna Town Camp, Charra, Chundaria, Colona, Coorabie, Cungena, Denial Bay, Dinah Line, Emu Farm, Fowlers Bay, Glen Boree, Head of the Great Australian Bight, Kalanbi, Koongawa Dundee, Koonibba, Laura Bay, Lookout Hill, Maltee, Merghiny, Mudamuckla, Munda Munda Wata Tjina, Munda Wanna-Mar, Nadia, Nanbona, Nanwoora, Nullarbor, Nundroo, Nunjikompita, Oak Valley, Over Road, Penong, Pintumba, Scotdesco, Smoky Bay, Tallowon, Thevenard, Tia Tuckia, Uworra, Wandana, Warevella, Watraba, White Well Corner, Yalata, Yarilena, Yellabinna and Yumbarra.

**Section 4** declares each of Ceduna and the Surrounding Region as a declared voluntary income management area for the purposes of Part 3B of the Act.

**Section 5** specifies each of Ceduna and the Surrounding Region of South Australia for the purposes of paragraph 123UCA(1)(b) of the Act, to commence the vulnerable income management measure in these locations.

## **Consultation**

The Commonwealth Government undertook extensive income management consultations with residents across the Ceduna region throughout September 2013 and February 2014. Overall findings from the consultations indicate community support for income management in the region. There was a high level of concern in the community about the neglect of children, family instability and the perceived waste of money on activities such as alcohol consumption, drug use and gambling. Many people expressed the opinion that improving the management of individual and household income through income management would contribute to a reduction of those problems. It was felt that Voluntary Income Management would give people on income support more control of their money, ensure their payments last throughout the fortnight and protect people from humbugging (a term used to describe various forms of financial exploitation). Some local government groups (education and safety groups) and non-government organisations were very supportive of the introduction of income management because of the stabilising role it could play in the community.

Consultation on the Determination was undertaken with the Department of Human Services and the Department of Prime Minister and Cabinet.

### **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*

## ***Social Security (Administration) (Declared income management areas — Ceduna and Surrounding region) Determination 2014***

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 the *Social Security (Administration) (Declared income management areas — Ceduna and Surrounding region) Determination 2014* (the Determination) is to declare the Ceduna local government area and surrounding region (the region) as areas 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 region 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 become subject to the income management regime under the vulnerable welfare payment recipient measure of income management. If the various criteria in section 123UCA(1) are satisfied, which include among other things, that the person is considered a vulnerable welfare payment recipient, a portion of the person's relevant welfare payments will be redirected to priority needs, such as food, clothing and shelter, of the person and his or her dependants.

Also, once the region is specified as 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 the vulnerable and voluntary measures of income management, subject to certain exceptions, 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 is 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’.*

The expansion of income management in the region will not affect the means of subsistence or political status of any person or group, but will require that subject to certain exceptions, 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 payment, 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 payments 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 region were consulted about how income management might help people and what model would work best. These consultations found that people in the region 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. Anyone who resides in the region (regardless of race), will be eligible for income management, so long as the other eligibility criteria are met.

The region is also 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 Anangu Pitjantjatjara Yankunytjatjara (APY) Lands on 1 October 2012 and the Ngaanyatjarra (Ng) Land on 15 April 2013. The BAFW sites, the APY Lands and the Ng Lands 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 region. They are reasonable, objective, and non-race based criteria. Against these criteria, the levels of disadvantage in the region are similar or greater than in the five BAFW sites. The potential benefits of income management for people in the region are the same as the benefits for people at the five BAFW sites. Further, consultations have found that people in the region were, on the whole, in favour of the introduction of income management. Protections, via review and appeal rights, are in place under the scheme.

The introduction of the vulnerable welfare payment recipient measure and voluntary income management measure in the region 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 region. The measures aim to ensure that vulnerable individuals and families have adequate food, housing and utilities and that children are protected.

## **Conclusion**

The Determination 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 and their dependants whilst also helping to improve their budgeting skills so they can meet their priority needs. To the extent that they 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 Kevin Andrews MP, Minister for Social Services**