

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Social Security (Administration) Act 1999

Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015

The *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015* ('the Rules') are made under section 123WN of the *Social Security (Administration) Act 1999* ('the Act'). The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The purpose of these Rules is to set out particular circumstances in which the Income Management Record (established by section 123VA of the Act) and a person's Income Management Account can be credited with an amount that is ascertained in accordance with the Rules. These circumstances all involve a debit from Income Management Accounts under Division 6 of Part 3B of the Act for the purpose of providing a stored value card, or increasing the monetary value stored on a stored value card, under section 123YE or 123YF of the Act. These rules are intended to have the same effect as the *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2008* (now repealed), whilst also reflecting changes to definitions implemented by the *Social Security and Indigenous Legislation (Budget and Other Measures) Act 2010*.

Income management was initially introduced as part of the Northern Territory Emergency Response (NTER) to stem the flow of cash fuelling abusive behaviours in communities, and to ensure that payments intended to benefit children are used for that purpose. The income management process involves withholding a portion of welfare payments, then directing the withheld amount to pay essential expenses such as food, clothing and housing. There is no overall loss or reduction of payments to any recipient as a result of these measures.

To support income management arrangements, the Australian Government implemented a stored value card (known as the BasicsCard). The BasicsCard allows people to make purchases using income management funds through the EFTPOS network.

These Rules set out the circumstances in which an amount that is ascertained in accordance with these Rules is to be credited to the Income Management Record and a person's Income Management Account. The circumstances specified in these Rules all relate to debits that are made from the Income Management Record and a person's Income Management Account for the

purpose of giving a BasicsCard to a person or increasing the monetary value stored on a BasicsCard.

Commencement

The rules commence the day after registration.

Consultation

Consultation on these Rules was with the Department of Human Services.

Regulation Impact Statement (RIS)

The Determination does not require a Regulatory Impact Statement (RIS) or a Business Cost Calculator Figure. The Determination is not regulatory in nature, will not impact on business activity and will result in no, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business, as a result of this Determination, against the nine categories listed in the Business Compliance Cost Checklist contained in the Best Practice Regulation Handbook prepared by the Office of Best Practice Regulation. OBPR Reference number: 19228.

Explanation of the provisions

Section 1 sets out the name of these Rules.

Section 2 provides that the Rules commence on the day after they are registered.

Section 3 contains definitions for terms that are used in the Rules.

Rules

Section 123WN of the Act allows for rules to be made specifying circumstances in which certain amounts, which are to be ascertained in accordance with the rules, are to be credited to the Income Management Record and a person's Income Management Account. This instrument is made under section 123WN and the circumstances and rules for ascertaining the amounts are set out in **section 4** of this instrument.

There are two requirements set out in **subsection 4(2)** that must be met in order for an amount to be credited to the Income Management Record and a person's Income Management Account under these Rules.

Threshold circumstances

The first requirement is that the threshold circumstance, set out in **subsection 4(3)** must be satisfied. The threshold circumstance is that the Income Management Record and a person's Income Management Account have been debited for the purpose of giving the person or their Part 3B payment nominee a stored value card under either paragraph 123YE(2)(a) or

123YF(2)(a) of the Act, or increasing the monetary value stored on a stored value card under paragraph 123YE(2)(c) or 123YF(2)(c) of the Act.

Subsection 4(4) provides a debit referred to in **subsection 4(3)** may be in the form of a single transaction or made through a series of transactions.

Particular circumstances

The second requirement is that one of the particular circumstances set out in the table in **subsection 4(6)** must be satisfied.

The table in **subsection 4(6)** outlines the particular circumstances that are relevant for paragraph 4(2)(b) of the Rules. The table also sets out the amount that is relevant for the purpose of paragraph 4(5)(a) of the Rules.

Subsection 4(5) sets out the amount that can be credited to the Income Management Record and a person's Income Management Account if one of the particular circumstances in the table in **subsection 4(6)** occurs and subsection 4(2) is satisfied.

Item 1 – The particular circumstance in item 1 of the table in subsection 4(6) is where a person or their Part 3B payment nominee asks the Secretary to reduce the monetary value stored on their stored value card. If the Secretary agrees to the request, the amount will no longer be available through the mechanism of the stored value card and should consequently be credited to the Income Management Record and the person's Income Management Account.

This circumstance may occur where an amount has been credited to a person's stored value card, but the person or their Part 3B payment nominee has not used this amount to acquire goods or services. If the person or their Part 3B payment nominee requires the use of these funds to meet another priority need (eg to pay a bill, or to meet funeral expenses) the Secretary may agree to the request and credit the amount to the Income Management Record and the person's Income Management Account.

The crediting amount, ascertained in accordance with subsection 4(5), for the particular circumstance in item 1 is: the amount of the requested reduction; or, if the monetary value on the stored value card is a lesser amount, the lesser amount; or, if there is no monetary value stored on the stored value card, a nil amount.

Item 2 – The particular circumstance in item 2 of the table in subsection 4(6) is where the monetary value stored on the stored value card exceeds \$3,000.

There is an administrative limit on the amount that can be stored on a stored value card and this has been set at \$3,000. The reason for this is to limit liability if there are unauthorised transactions made with the card.

The crediting amount, ascertained in accordance with subsection 4(5), for the particular circumstance in item 2 is: the monetary value on the stored value card that exceeds this limit; or another amount determined by the Secretary; or, if the monetary value on the stored value card is a lesser amount, the lesser amount.

Item 3 – The particular circumstance in item 3 of the table in subsection 4(6) is where monetary value has been stored on the stored value card, but the Secretary forms the view that the affected person is unable or unlikely to be able to use the stored value card to acquire goods and services.

This circumstance may occur if the person cannot use the stored value card because of circumstances beyond their control such as a faulty card, the unavailability of the EFTPOS system or the unavailability of the card payments system.

The crediting amount, ascertained in accordance with subsection 4(5), for the particular circumstance in item 3 is the monetary value that is stored on the card.

Item 4 – The particular circumstance in item 4 of the table in subsection 4(6) is if an error has been made in the amount debited from the Income Management Record and Income Management Account and stored on the stored value card.

For example, if a person requests that \$100 be made available through their Stored value card for the purpose of acquiring goods and services, but an error resulted in \$200 being debited from the Income Management Record and the person's Income Management Account, the excess \$100 should be re-credited to the Income Management Record and Income Management Account and will no longer be accessible through the Stored value card.

The crediting amount ascertained in accordance with subsection 4(5), for the particular circumstance in item 4 is: an amount equal to the amount debited in error; or, if the monetary value on the stored value card is a lesser amount, the lesser amount.

Item 5 – The particular circumstance in item 5 of the table in subsection 4(6) is if a person dies and they have a stored value card with a monetary credit balance and applies whether or not the person is subject to the income management scheme at the time of their death.

In this circumstance, the amount stored on the stored value card should be returned to the Income Management Record and the person's Income Management Account and be available as part of the residual amount to be paid under section 123WL of the Act to the legal personal representative of the person, or to another person ascertained in accordance with paragraph 123WL(3)(b) of the Act.

The crediting amount, ascertained in accordance with subsection 4(5), for the particular circumstance in item 5 is the monetary value that is stored on the card.

Item 6 – The particular circumstance in item 6 of the table in subsection 4(6) is where the person ceases to be subject to the income scheme (other than because the person has died) and there is a request made to the Secretary to cancel the stored value card.

This allows the amount that has been credited to the stored value card to be returned to the Income Management Record and the person's Income Management Account and this will be included in the credit balance of the person's Income Management Account and be available to be paid as determined by the Secretary under section 123WJ of the Act.

The crediting amount, ascertained in accordance with subsection 4(5), for the particular circumstance in item 6 is: the monetary value that is stored on the card; or, if there is no monetary value stored on the stored value card, a nil amount.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015

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 scheme that applies to recipients of certain welfare payments. If a person is subject to income management 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 ensure that the Rules set out particular circumstances in which the Income Management Record (established by section 123VA of the Act) and a person's Income Management Account can be credited with an amount that is ascertained in accordance with the Rules (made under section 123WN of the Act).

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 can be 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 (articles 26, 24 and 27 of the Convention on the Rights of the Child, respectively).

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. 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 Rules do not in their terms discriminate on the basis of race. But it is acknowledged that the population of designated areas of income management are predominantly Indigenous (approximately 80%), and therefore that the effect of the Rules is likely to be greater on Indigenous people.

Conclusion

The Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015 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 Scott Morrison, Minister for Social Services