

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Social Security (Administration) Act 1999

Social Security (Administration) (Declared voluntary income management areas – New South Wales, Queensland, South Australia and Victoria) Amendment Determination 2015

Purpose

The *Social Security (Administration) (Declared voluntary income management areas – New South Wales, Queensland, South Australia and Victoria) Amendment Determination 2015* ('the **Amendment Determination**') is made for the purposes of Part 3B of the *Social Security (Administration) Act 1999* ('the **Act**').

This Amendment Determination specifies the Greater Adelaide region, consisting of 19 Local Government Areas, as declared voluntary income management areas under paragraph 123TGA(c) of the Act.

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

Background

Following a request from the South Australian Government, the Australian Commonwealth Government will expand voluntary income management areas to the Greater Adelaide region in South Australia. The Local Government Area of Playford is already a declared area for voluntary income management in South Australia.

As a result of the Coronial inquest into the death of Chloe Lee Valentine in South Australia, the Coroner recommended that the South Australian Government negotiate with the Commonwealth Government on declaring other areas in South Australia for child protection income management.

The child protection measure already applies to the Greater Adelaide 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.

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This Amendment Determination will expand voluntary income management to the Greater Adelaide region. This includes expansion to 19 Local Government Areas.

Commencement

The Amendment Determination commences on 1 October 2015.

Consultation

In October 2014, the Department was asked to provide input to the Coronial Inquest into the death of Chloe Lee Valentine regarding the use of income management in South Australia. On 9 April 2015, the South Australian State Coroner, Mr Mark Johns, released the findings.

There are three recommendations relating to the operation of income management.

- Families SA direct its staff to actively apply child protection income management in the Playford area of South Australia and that the 'policy' of obtaining a benefit recipient's consent to that course be abolished.
- That the State Government takes immediate steps to negotiate with the Commonwealth Government for the declaring of areas other than the City of Playford as declared areas for the imposition of child protection income management.
- That the State Government begin negotiations with the Commonwealth Government with a view to making the child protection income management regime a permanent structure and to that end, negotiate an indefinite extension beyond 30 June 2015 which is when the present Bilateral Agreement expires.

The Coroner also noted that money provided by the Government as a welfare measure should not be spent on illicit drugs, alcohol, cigarettes or gambling when a child of the recipient is subjected to anything less than parenting that conforms to standards commonly accepted by right thinking members of society.

The South Australia Minister for Child Protection Reform, the Hon John Rau MP, requested that negotiations commence to consider extending and expanding income management in South Australia beyond the three current trial sites. The Department made initial contact with the Department of Premier and Cabinet (DPC) South Australia and Families SA and has worked in collaboration with them on addressing these recommendations. As part of the negotiations it was decided to implement the voluntary income management measure alongside the child protection measure. Historically, this measure has always been implemented in income management locations

alongside other measures to avoid potentially identifying only those on the child protection measure.

Ongoing consultations have been undertaken with the South Australian State Government and Families SA with a view to enter into a bilateral agreement between the Commonwealth and State Government that finalise referral protocols to income management. In conjunction with these consultations, the Commonwealth has held regular meetings with stakeholders, including the Department of Human Services as the service delivery agency, State Government and the Department of Prime Minister and Cabinet that have raised issues, with a particular focus on income management. The Department also identified peak bodies within the Greater Adelaide area that could potentially have interactions with income managed customers and has provided a thorough information session on the programme and benefits it can have for customers.

Regulation Impact Statement (RIS)

The Amendment Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 states the name of the Amendment Determination.

Section 2 provides that the Amendment Determination commences on 1 October 2015.

Section 3 provides that 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 specifies the 19 Local Government Areas that will be declared voluntary income management areas in South Australia for the purposes of Part 3B of the Act.

Statement of Compatibility with Human Rights

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

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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

Part 3B of the *Social Security (Administration) Act* ('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.

If a person wants to volunteer for 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 paragraph 123TGA(c) of the Act.

The purpose of the *Social Security (Administration) (Declared voluntary income management areas – New South Wales, Queensland, South Australia and Victoria) Amendment Determination 2015* is to specify, under section 123TGA of the Act, that the voluntary measure of income management will also operate in the Greater Adelaide Area of South Australia.

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*'.

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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 voluntary measure of 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 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

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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 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 in South Australia. The programme was also introduced into Playford on 1 July 2012 as part of the Government's *Building Australia's Future Workforce* package, the Anangu Pitjantjatjara Yankunytjatjara Lands on 1 October 2012 and the Laverton Shire and Ngaanyatjarra Lands on 15 April 2013.

The introduction of voluntary income management measure in the region are reasonable and a non-discriminatory measure. It has been introduced on the basis of reasonable and objective criteria, and as a result of the Coronial inquest into the death of Chloe Lee Valentine in South Australia, the Coroner recommended that the South Australian Government negotiate with the Commonwealth Government on declaring other areas in South Australia for income management. The measure aims 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 Scott Morrison MP, Minister for Social Services