**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Human Services

*Social Security (Administration) Act 1999*

*Social Security (Administration) (Trial Area — East Kimberley) Determination 2016*

**Purpose**

In accordance with subsection 124PD(2) and subsection 124PG(1) of the Social Security (Administration) Act 1999 (the Act), this Determination declares East Kimberley and various Included Communities as a trial area for the cashless debit card trial, and sets out the class of trial participants for that trial area.

**Background**

The debit card trial will test the concept of cashless welfare arrangements by disbursing particular welfare payments to a welfare restricted bank account, accessed by a debit card which does not allow cash withdrawals. Ceduna and the Surrounding Regions have already been declared a trial area for the purposes of the trial. East Kimberley is the second trial site, and the trial will commence there from 26 April 2016.

The trial will test whether significantly reducing access to discretionary cash, by placing a significant proportion of a person’s welfare payments into a welfare restricted bank account, can reduce the habitual abuse and associated community level harm resulting from alcohol, gambling and drugs. It will also test whether cashless welfare arrangements are more effective when community bodies are involved.

The trial will be conducted in up to three locations, selected on the basis of community support, high levels of welfare dependence and where gambling, alcohol and/or drug abuse are causing unacceptable levels of harm within the community.

To test the concept effectively, a default 80 per cent of payments received by trial participants receiving a triggering working age welfare payment, such as Newstart Allowance, will be placed in the welfare restricted bank account.

A person will not be able to use the debit card associated with the welfare restricted bank account to access cash or use the restricted money in the account for gambling, alcohol or drugs. Recognising that we do not live in a cashless society and that people need cash for minor expenses such as children’s lunch money or bus fares, the remaining 20 per cent of payments will be available for use at a person’s discretion.

In trial locations, the debit card will work as similarly as possible to any other bank card. The trial will seek to ensure the card will work at all existing terminals and shops, except excluded businesses such as those exclusively selling restricted products, as well as online where possible. The only difference will be that the debit card will not allow the purchase of alcoholic beverages and gambling products, or cash withdrawals.

This Determination also establishes the class of trial participants for the East Kimberley and Included Communities trial area. The class of trial participants will not include persons whose welfare payment is paid to particular kinds of payment nominee, including persons with a social security or family assistance payment nominee, or a person whose youth allowance payments are paid to their parent or guardian. This will include a person to whom another person’s payments under the ABSTUDY Scheme are to be paid to their parent or guardian in accordance with part 71.7 of the ABSTUDY policy manual.

It will not be appropriate for some persons to be trial participants, because their particular circumstances may make certain aspects of the cashless debit card impractical. Persons who live outside the trial area during term time for the purposes of completing their course of study may find it impractical to use a cashless debit card outside the trial area. For example, they will not have access to the same support services as trial participants who live within the trial area. Such students will not be within the class of trial participants.

Age pension recipients will not be trial participants unless they volunteer to be subject to the trial. Age pension is not a trigger payment for the trial (under the definition of ‘trigger payment’ in section 124PD of the Act). Persons nearing pension age, such that they would ordinarily be transferred from their current welfare payment to age pension during the proposed course of the East Kimberley trial (12 months from 26 April 2016) and would cease to be trial participants, will not be within the class of trial participants.

Some welfare recipients are subject to income management under Part 3B of the Act. Persons whose usual place of residence is in East Kimberley may be subject to income management under the child protection measure of income management (section 123UC of the Act). Such persons will not be trial participants while they remain subject to this measure of income management.

Similarly, a person who was formerly a resident of the Northern Territory may be subject to income management under the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC of the Act). Such persons may remain subject to income management for 13 weeks despite their usual place of residence ceasing to be within a specified income management area. Such persons who take up residence in the trial area will not be trial participants while they remain subject to income management.

Similarly, a person formerly a resident of Queensland may be subject to income management under the Queensland Family Responsibilities Commission measure of income management (section 123UF of the Act). If such a person relocates to the trial area, they will not be a trial participant while they remain subject to income management.

For some persons, being a trial participant may seriously risk the person’s mental, physical or emotional wellbeing. Where an officer of the Department of Social Services (delegate of the Secretary) is satisfied that being a trial participant is seriously risking a person’s mental, physical or emotional wellbeing, the officer may make an administrative decision resulting in that person no longer falling within the class of persons who are trial participants.

Officers are not required to actively take steps to assess every trial participant’s individual circumstances to decide whether being a trial participant would seriously risk that person's mental, physical or emotional wellbeing. Officers will consider making this determination once they are made aware of facts which indicate that being a trial participant may seriously risk a person’s mental, physical or emotional wellbeing. Where an officer is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing at the beginning of the trial and makes a determination to this effect, the person will not be a trial participant from the commencement of the trial while that condition is met. If the serious risk to the person is only brought to an officer’s attention during the course of the trial, the determination may be made, resulting in the person not being a trial participant while that condition is met.

The Minister for Human Services has been appointed to also administer the Department of Social Services, and so pursuant to section 19A of the Acts Interpretation Act 1901 has the powers of the ‘Minister’ under Part 3D of the Act.

The Determination is a legislative instrument.

**Commencement**

The Determination commences on 26 April 2016, and ceases on the date 6 months from its commencement.

**Consultation**

Extensive on-the-ground consultations have been occurring in the East Kimberly region, where feedback has been very positive. On 24 July 2015, Indigenous leaders in the East Kimberley Ian Trust (Executive Chairman, Wunan Foundation), Desmond Hill (Chairperson, MG Corporation), and Ted Hall (Chairperson, Gelganyem Trust) wrote to Parliamentary Secretary the Hon Alan Tudge MP, copying in the Hon Jenny Macklin MP to “*urge Federal Members of Parliament from all sides to listen to us on this matter and take a non-partisan position in order to allow this trial to proceed*”.

Those consulted include potential trial participants, Aboriginal leaders, family violence service providers, family support services, education providers, health providers, rehabilitation service providers, police, local government, state government agencies, and the Department of Human Services local staff.  The consultation format has included one-on-one meetings and group roundtables.

Consultations have covered a number of issues including seeking advice from community members about the identification of local and cultural protocol and preferred entry points for community discussion. Topics of discussion included:

* key trial objectives;
* parameters (including percentages and trial boundaries);
* the anticipated benefits of the trial in terms of community safety/wellbeing for vulnerable people;
* the identification of gaps and possible support services;
* the role and formation of a community body;
* the evaluation; and
* differences between the trial and income management

Consultations continue in the East Kimberley region and will extend through to implementation of the trial and beyond to ensure the community is prepared and have all necessary information and support for the trial.

**Regulation Impact Statement (RIS)**

This Determination is not regulatory in nature, will have minimal 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 Determination.

**Section 2** provides for commencement of the Determination.

**Section 3** provides the cessation of the Determination.

**Section 4** sets out definitions relevant to the Determination.

Many of the terms used in the Determination are defined in the Act, in particular Part 3D of the Act. These terms have therefore not been defined in section 4 of the Determination.

A note to this section states that under paragraph 13(1)(b) of the *Legislation Act 2003*, where enabling legislation confers on a rule‑maker the power to make a legislative instrument, then, unless the contrary intention appears, expressions used in any legislative instrument so made have the same meaning as in the enabling legislation as in force from time to time.

***ABSTUDY Scheme*** is defined by reference to the Social Security Act (and is relevant to the definition of Part 3D payment nominee).

***Act*** means the *Social Security (Administration) Act 1999*.

***East Kimberley***is the area composed of and limited to the Australian Bureau of Statistics’ 2011 Australian Statistical Geography Standard (ASGS) Statistical Area Level 1s (SA1) of 5120808, 5120810, 5120802, 5120805, 5120801, 5120807, 5120815, 5120812, 5120814, 5120816, 5120818, 5120811 and 5120817.

***Included Communities***are the communities listed in Schedule 1 to this determination, including the main name of each community, and various alternative names**.**

These descriptions identify an area and various communities in Western Australia, as depicted in the map below. Included Communities are denoted with a blue rather than grey dot in the map. The area which is to the north of the red dotted line is East Kimberley referred to by ASGS SA1 areas.



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>.

***outside trial area student*** means:

1. a full-time student for the purposes of Part 3B of the Act; or
2. a person receiving a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance; or
3. a person receiving pensioner education supplement at a fortnightly rate provided for by subsection 1061PZG(2) of the Social Security Act; or
4. a person who is receiving youth allowance as a new apprentice as defined in subsection 23(1) of the Social Security Act; or
5. a person who is receiving an austudy payment; or
6. a person who is receiving special benefit on the basis the person is:

(i) required by the Secretary to undertake a course under section 736 of the Social Security Act; or

(ii) engaged in a course undertaken under a Special Benefit Employment Pathway Plan;

who lives outside the trial area for the purposes of meeting study requirements.

***Part 3D payment nominee***means:

(a) a person who is, by virtue of an appointment in force under section 123B of the Act or section 219TB of the *A New Tax System (Family Assistance)(Administration) Act 1999*, the payment nominee of another person; or

(b) a person to whom another person's instalments of youth allowance are to be paid in accordance with subsection 45(1) of the Act; or

(c) a person to whom another person’s payments under the scheme known as the ABSTUDY Scheme are to be paid in accordance with part 71.7 of the ABSTUDY policy manual.

***pension age*** has the meaning given at paragraph (b) of the definition of ‘pension age’ in subsection 23(1) of the Social Security Act.

***Social Security Act*** means the *Social Security Act 1991*.

These definitions are relevant to the class for the application of trigger payments provided for by section 6 of the Determination.

**Section 5** specifies East Kimberley and the areas of each of the Included Communities as an area for the purpose of the definition of ‘trial area’ in subsection 124PD(1) of the Act.

**Section 6** provides that all the trigger payments listed in subsection 124PD(1) will apply in relation to East Kimberley and the Included Communities, and in respect of persons of a specified class. **Paragraph 6(a)** provides that that class includes persons who meet the conditions in subparagraphs 6(a)(i) to (iv).

**Subparagraph 6(a)(i)** provides that the class of participants includes persons who do not have a Part 3D payment nominee. This term is defined in section 4 of the Determination.

**Subparagraph 6(a)(ii)** provides that the class includes persons who are not the subject of a determination made by the Secretary under subsection 43(3A) of the Act, relating to weekly payments for persons in hardship.

**Subparagraph 6(a)(iii)** provides that the class of trial participants only includes persons who have not reached pension age and will not reach pension age during the 12 month period commencing 15 March 2016. A definition of **pension age** is inserted by section 4 of the Determination by reference to the Social Security Act.Section 4 also inserts a definition of the **Social Security Act** to support the definition.

**Subparagraph 6(a)(iv)** provides that the class of trial participants only includes persons who are not subject to the income management regime under section 123UC (child protection) or 123UF (Queensland Family Responsibilities Commission) of the Act.

**Subparagraph 6(a)(v)** provides that the class of trial participants only includes persons who are not subject to the income management regime under section 123UCB (disengaged youth) or 123UCC (long-term welfare recipient) of the Act because subsection 123UCB(3) or subsection 123UCC(3) applies to the person. Those subsections provide that the person remains subject to income management for 13 weeks from the time the person’s usual place of residence ceased to be within a specified income management area.

**Subparagraph 6(a)(vi)** provides that the class of trial participants only includes persons who are not an outside trial area student. A definition of **outside trial area student** is in section 4 of the Determination. Outside trial area student means a full-time student for the purposes of Part 3B of the Act; or a person receiving a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance; or a person receiving pensioner education supplement at a fortnightly rate provided for by subsection 1061PZG(2) of the Social Security Act; or a person who is receiving youth allowance as a new apprentice as defined in section 23 of the Social Security Act; or a person who is receiving an austudy payment; or a person who is receiving special benefit on the basis the person is:

(i) required by the Secretary to undertake a course under section 736 of the Social Security Act; or

(ii) engaged in a course undertaken under a Special Benefit Employment Pathway Plan;

who lives outside the trial area for the purposes of meeting study requirements.

**Subparagraph 6(a)(vii)** provides that the class of trial participants only includes persons who are not the subject of a determination by the Secretary under section 7 of the Determination.

**Section 7** empowers the Secretary to make a decision that a person meets criteria such that the person is not within a class established by section 6 this Determination. Subsection 7(1) provides that the Secretary may determine that a person, who would otherwise be in a class of persons determined in section 6, is not in a class of person for the purposes of section 124PG(1) of the Act if the Secretary is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing. This section does not delegate to the Secretary the decision as to the class of persons who are trial participants. It empowers the Secretary (or their delegate) to make an administrative decision in relation to an individual person that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing, which means that the person is not within the prescribed class of trial participants. This is a factual assessment of the person’s circumstances. If such a determination is made, the person will no longer be within the class of trial participants determined by the Minister in this Determination, and no longer subject to the trial.

Subsection 7(2) is an avoidance of doubt provision. It provides that the Secretary is not required to consider whether to make a decision under section 7 prior to a person becoming a trial participant. In practice, the Secretary will consider making a decision under this section only where a delegate of the Secretary becomes aware of facts which indicate that being a trial participant may seriously risk a person's mental, physical or emotional wellbeing. If, after gathering relevant evidence, the delegate becomes satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing, a determination to this effect may be made.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the*

*Human Rights (Parliamentary Scrutiny) Act 2011*

**SOCIAL SECURITY (ADMINISTRATION) (TRIAL AREA – EAST KIMBERLEY) DETERMINATION 2016**

This 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***

The debit card trial will test the concept of cashless welfare arrangements by disbursing particular welfare payments to a welfare restricted bank account, accessed by a debit card which does not allow cash withdrawals. Ceduna and the Surrounding Regions have already been declared a trial area for the purposes of the trial. East Kimberley is the second trial site, and the trial will commence there from 26 April 2016.

The trial will test whether significantly reducing access to discretionary cash, by placing a significant proportion of a person’s welfare payments into a restricted bank account, can reduce the habitual abuse and associated community level harm resulting from alcohol, gambling and drugs. It will also test whether cashless welfare arrangements are more effective when community bodies are involved.

The trial will be conducted in up to three locations, selected on the basis of community support, high levels of welfare dependence and where gambling, alcohol and/or drug abuse are causing unacceptable levels of harm within the community.

To test the concept effectively, a default 80 per cent of payments received by trial participants receiving a triggering working age welfare payment, such as Newstart Allowance, will be placed in the restricted bank account.

A person will not be able to use the debit card associated with the restricted bank account to access cash or use the restricted money in the account for gambling, alcohol or drugs. Recognising that we do not live in a cashless society and that people need cash for minor expenses such as children’s lunch money or bus fares, the remaining 20 per cent of payments will be available for use at a person’s discretion.

In trial locations, the debit card will work as similarly as possible to any other bank card. The trial will seek to ensure the card will work at all existing terminals and shops, except excluded businesses such as those exclusively selling restricted products, as well as online where possible. The only difference will be that the debit card will not allow the purchase of alcohol and gambling products or cash withdrawals.

This Determination establishes the class of trial participants for the East Kimberley and Included Communities trial area. The class of trial participants will not include persons whose welfare payment is paid to particular kinds of payment nominee, including persons with a social security or family assistance payment nominee, or a person whose youth allowance payments are paid to their parent or guardian. This will include a person to whom another person’s payments under the ABSTUDY Scheme are to be paid in accordance with part 71.7 of the ABSTUDY policy manual.

It will not be appropriate for some persons to be trial participants, because their particular circumstances may make certain aspects of the cashless debit card impractical. Persons who live outside the trial area during term time for the purposes of completing their course of study may find it impractical to use a cashless debit card outside the trial area. For example, they will not have access to the same support services as trial participants who live within the trial area. Such students will not be within the class of trial participants.

Age pension recipients will not be trial participants unless they volunteer to be subject to the trial. Age pension is not a trigger payment for the trial (under the definition of ‘trigger payment’ in section 124PD of the Act). Persons nearing pension age, such that they will be transferred from their current welfare payment to age pension during the proposed course of the East Kimberley trial (12 months from 26 April 2016) and would cease to be trial participants, will not be within the class of trial participants.

Some welfare recipients are subject to income management under Part 3B of the Act. Persons whose usual place of residence is in East Kimberley may be subject to income management under the child protection measure of income management (section 123UC of the Act). Such persons will not be trial participants while they remain subject to this measure of income management.

Similarly, a person who was formerly a resident of the Northern Territory may be subject to income management under the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC of the Act). Such persons may remain subject to income management for 13 weeks despite their usual place of residence ceasing to be within a specified income management area. Such persons who take up residence in the trial area will not be trial participants while they remain subject to income management.

Similarly, a person formerly a resident of Queensland may be subject to income management under the Queensland Family Responsibilities Commission measure of income management (section 123UF of the Act). If such a person relocates to the trial area, they will not be a trial participant while they remain subject to income management.

For some persons, being a trial participant may seriously risk the person’s mental, physical or emotional wellbeing. Where an officer of the Department of Social Services (delegate of the Secretary) is satisfied that being a trial participant is seriously risking a person’s mental, physical or emotional wellbeing, the officer may make an administrative decision resulting in that person no longer falling within the class of persons who are trial participants. Officers of the Department of Social Services will consider making this determination once they are made aware of facts which indicate that being a trial participant may seriously risk a person’s mental, physical or emotional wellbeing. Where an officer is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing at the beginning of the trial and makes a determination to this effect, the person will not be a trial participant from the commencement of the trial while that condition is met. If the serious risk to the person is only brought to an officer’s attention during the course of the trial, the determination may be made, resulting in the person not being a trial participant while that condition is met.

***Human rights implications***

*Objectives*

The Objectives of Part 3D of the Act and this Determination are to:

(a) reduce the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs; and

(b) determine whether such a reduction decreases violence or harm in the Region; and

(c) determine whether such arrangements are more effective when community bodies are involved; and

(d) encourage socially responsible behavior.

In other words, the debit card has the objective of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behavior, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.[[1]](#footnote-1)

In the Trial Area, there is clear evidence of the harm caused by alcohol in the community. According to WA Police data, in 2013-14 in Western Australia there were 1,456 offences against the person for every 100,000 people. The Kimberley region had offence rates against the person 4.5 times that of Western Australia overall.[[2]](#footnote-2)

In 2012-13, there were 100 reported incidents of family violence per 1,000 people in the Kimberley, as compared to the next highest of rate of family violence which was 43 per 1,000.[[3]](#footnote-3)

*General Safeguards*

A number of general safeguards which help protect human rights have been incorporated in the trial. First, the roll-out of the trial in the Trial Area has been subject to an extensive consultation process. Details of the consultation process have been provided in the Explanatory Statement.

Second, community bodies will have the power to vary the percentage of funds that a person has restricted, subject to that person’s agreement (s124PK). This will provide an ongoing mechanism to ensure there is flexibility built into the Determination to treat individual cases differently.

Third, the trial of cashless welfare arrangements will be subject to an independent, comprehensive evaluation which will consider the impacts of limiting the amount of welfare funds that may contribute to community level harm. The evaluation will use both quantitative and qualitative information to explore perceived and measurable social change in trial communities.

Finally, subsection 124PF(1) of the Act specifies the trial will commence on 1 February 2016 and end on 30 June 2018. The policy intention is that the trial will only run for 12 months in each trial area. The clause acts as an appropriate and effective safeguard, as Parliament must amend the Act to continue the trial beyond 30 June 2018.

*The right to a private life*

Article 17 of the *International Covenant on Civil and Political Rights* sets out the right to a private life. It prohibits arbitrary or unlawful interferences with an individual’s privacy, family, correspondence or home.

The debit card trial seeks to achieve the legitimate objective of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behavior, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

In order to achieve these objectives, the trial will place 80 per cent of restrictable payments received by a person on a trigger payment into a restricted bank account. Funds held in this bank account will not be able to be withdrawn as cash or spent on alcohol or gambling products. There is a clear rational connection between these objectives and the restrictions on the right to a private life: the restrictions on the purchase of alcohol, illegal drugs and gambling products by trial participants in the Trial Area are designed to reduce alcohol fuelled violence and harm, and encourage socially responsible behaviour.

By reducing a person’s choice in how they access and spend their money, the trial engages the right to a private life. This limitation on a person’s right to a private life is reasonable and proportionate given the extensive harm caused by alcohol in the Trial Area as discussed above under the section titled ‘Objectives’. There are also effective community safeguards over the extent of the restrictions imposed.

*The right to privacy*

The Determination also engages the right to privacy. Sections 124PN and 124PO allow the disclosure of information to the Secretary by a financial institution (Indue) and a community body, respectively. They seek to achieve a legitimate objective and are necessary for the trial to operate effectively and to be evaluated. In order to establish bank accounts for trial participants, the Department of Human Services (DHS) will need to transfer customer information to Indue. Indue will then need to provide new account details back to DHS. While the trial is operating, the Indue will need to transfer information about trial participants (its customers) to the Department of Social Services (DSS). DSS will use this information to evaluate the trial. Without providing customer information to Indue, new accounts cannot be set up and so the trial could not proceed.

Community bodies will also have the power to vary the percentage of funds that a person has restricted, subject to that person’s agreement (s124PK). To allow this provision to operate, community bodies will need to be able to advise DHS to change the percentage of funds a person has restricted. In the Trial Area, discussions related to the establishment of a community body have begun. The purpose of establishing community bodies is to test whether involving the community assists with decreasing violence and harm in the Trial Area, and to allow flexibility in the amount of restricted welfare payments.

Sections 124PN and 124PO do not provide a blanket exemption from privacy laws for Government, Indue or any community body. They only allow the sharing of information that is necessary for the trial to be implemented and evaluated. This means there are still safeguards in place to protect individual privacy. Both Government and Indue will still be required to act in accordance with privacy laws, more generally, and the Australian Privacy Principles (APPs). The APPs set out strict rules around how personal information can be used. For example, they prohibit the disclosure of personal information for direct marketing. Notably, Government will not be able to see what people are purchasing.

Any limitation on a person’s right to privacy is reasonable and proportionate given the extensive harm caused by alcohol in the Trial Area as discussed above under the section titled ‘Objectives’. There are also effective community safeguards over the extent of the restrictions imposed.

*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 United Nations Committee of Economic, Social and Cultural Rights (the UN Committee) has stated that implementing this 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 form of education’.

The trial will not detract from the eligibility of a person to receive welfare nor reduce the amount of a person’s welfare entitlement. Instead, the trial restricts the ability of trial participants from spending money on alcohol, gambling and illegal drugs. The UN Committee has stated that the right to social security encompasses the right to access and maintain benefits ‘in cash or in kind’. In other words, the trial does not detract from situations in which someone has the right to social security, such as unemployment and workplace injury, and family and child support; it simply supports a person further once they have achieved their right to receive social security.

The exemptions to the classes of persons who are trial participants recognise and promote this right as they are all designed to ensure individuals s, who could not fully participate in the trial due to location, the fact they are subject to income management measures, are nearing pension age, or have payment nominees receive welfare payments in the routine manner and are not subject to any restrictions on how they spend their welfare payments.

*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 realisation of this right’. Further to this, article 11(2) of the *ICESCR* states that ‘measures, including specific programmes,’ should be taken in ‘recognising the fundamental right of everyone to be free from hunger’.

The trial does not limit this right for affected people in the Trial Area. In fact, it arguably promotes the right to an adequate standard of living. Under trial arrangements, people will be able to use restricted funds to access any goods and services with the exception of alcohol and gambling products, with the aim of reducing abuse of these goods and services and associated harm and violence. The trial will not have the effect of restricting access to essential needs required to maintain an adequate standard of living. On the contrary, by restricting the amount of welfare payments that can be spent on alcohol, gambling and illegal drugs, it ensures more money is available for maintaining an adequate standard of living. Access to some discretionary cash will be available to ensure that people can still participate in cash economies to purchase items which contribute to an adequate standard of living.

*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’.

By restricting the amount of money people can spend on alcohol, gambling and illegal drugs the trial of cashless welfare arrangements engages a person’s right to self-determination. As outlined above, this limitation on how social security payments are spent is to ensure that vulnerable people are protected from abuse of these substances, and associated harm and violence. Any limitation of this right is therefore reasonable and proportionate.

*The rights of equality and non-discrimination*

The rights of equality and non-discrimination are provided for in several of the seven core international human rights treaties to which Australia is a party, most relevantly the *International Covenant on Civil and Political Rights* 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 a 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 rights to equality and non-discrimination are not directly limited by the trial. This is because, as set out in this Determination, anyone residing in the Region who receives a trigger payment, apart from those exempted, will become a trial participant. The trial is not targeted at people of a particular race, gender or cultural characteristic but to welfare recipients who meet particular criteria. People in the Trial Area will also be able to volunteer for the trial. A community body will be able to vary the proportion of a person’s rate of restriction (although not to less than 50 per cent), and this function will not be based on any racial or cultural characteristic of a person.

While the trial does not directly limit the rights to equality and non-discrimination, it may indirectly limit these rights. In the Trial Area, Indigenous people will likely make up around 83% of the total income support payment population who will become trial participants. Women will likely comprise around 57% of projected trial participants and participants receiving the Disability Support Pension likely comprise around 26% of projected trial participants.[[4]](#footnote-4) The trial applies to everyone on working age welfare payments rather than just individuals on specific welfare payments.

It is acknowledged that Indigenous Australians comprise a large proportion of those likely to become trial participants as a result of this Determination. However, the Trial Area has been chosen as a trial location based on objective criteria, ‘such as high levels of welfare dependence and community harm, as well as the outcomes of comprehensive consultation with prospective communities.’[[5]](#footnote-5) These criteria clearly relate to the legitimate objectives of this Determination. Therefore, there is a rational connection between any limitation on the right to social security and the objectives of this Determination.

Finally, given the objectives of this Determination and the scale of unacceptable harm in the Trial Area as discussed above in the section titled ‘Objectives’, any limitation on the right to equality and non-discrimination is reasonable and proportionate.

***Conclusion***

This determination is compatible with human rights. A trial of cashless welfare arrangements in the Trial Area 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 dependents. 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, reducing violence and harm, 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.

**[Circulated by the authority of the Minister for Human Services, the Hon Alan Tudge MP]**

1. *Social Services Legislation Amendment (Debit Card Trial) Bill 2015,* Explanatory Memorandum, Statement of Compatibility, p. 4. [↑](#footnote-ref-1)
2. Western Australia Police, *Crime Statistics*, available at <https://www.police.wa.gov.au/Crime/Statistics> accessed 20/02/2016. [↑](#footnote-ref-2)
3. Western Australia Department of Child Protection and Family Support, *Western Australia’s Family & Domestic Violence Prevention Strategy to 2022, Achievement Report to 2013* (2013). [↑](#footnote-ref-3)
4. Department of Human Services administrative data (DSS Blue Book dataset) as at 27/11/15. [↑](#footnote-ref-4)
5. *Social Services Legislation Amendment (Debit Card Trial) Bill 2015,* Explanatory Memorandum, Statement of Compatibility, p. 3. [↑](#footnote-ref-5)