

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security (Administration) Act 1999

Social Security (Administration) (Recognised State/Territory Authority - Northern Territory Department of Health) Determination 2017

Summary

The *Social Security (Administration) (Recognised State/Territory Authority - Northern Territory Department of Health) Determination 2017* (the **Determination**) is made for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (the **Act**).

The Determination is made by the Minister for Social Services.

Purpose

The purpose of the Determination is to determine that the Northern Territory Department of Health is a recognised State/Territory authority for the purposes of Part 3B of the Act.

As a recognised State/Territory authority, an officer or employee of the Northern Territory Department of Health may give the Secretary a written notice requiring that a person be subject to income management under section 123UFAA of the Act.

The Determination also repeals the *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2013* that recognised the NT Alcohol Mandatory Treatment Tribunal (AMTT) as a recognised State/Territory authority for the purposes of Part 3B of the Act.

The Determination is a legislative instrument.

Background

Income Management

Income management, set up under Part 3B of the Act, aims to support vulnerable individuals. A person subject to income management has an income management account. A proportion of the person's welfare payments are directed to the person's income management account. Income managed funds cannot be used for excluded items, such as alcohol, tobacco, pornography and gambling products. Amounts may be debited from the person's income management account for the purposes of enabling the Secretary to take action directed towards meeting the priority needs of the person and/or the person's children if appropriate.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to income management. Section 123UFAA provides that a person is subject to income management at a particular time (the test time) if, among other things, before the test time, an officer or employee of a recognised State/Territory authority has given the Secretary a written notice requiring that the person be subject to income management, and, at the test time, the State or Territory authority is a recognised State or Territory authority.

The term **recognised State/Territory authority** has the meaning given by section 123TGAA of the Act. Subsection 123TGAA(1) provides that the Minister may, by legislative instrument, determine that a specified department, part of a department, body or an agency of a State or Territory is a recognised State/Territory authority for the purposes of Part 3B.

Subsection 123TGAA(2) provides that in making a determination under subsection 123TGAA(1) the Minister must be satisfied that officers or employees of the department or part of the department, or of the body or agency, have functions, powers or duties in relation to the care, protection, welfare or safety of adults, children or families.

Subsections 123TGAA(3) and (4) further provide that before the Minister can make a determination under subsection 123TGAA(1) the Minister must be satisfied that there is an appropriate process for reviewing any decisions made by the authority to refer a person onto income management under paragraph 123UFAA(1)(b) of the Act.

The Banned Drinker Register

The AMTT was established on 1 July 2013 under the *Alcohol Mandatory Treatment Act 2013* (NT) (the **AMT Act**).

The *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol Mandatory Treatment Tribunal) Determination 2013* recognised the AMTT as a State/Territory authority, providing it with the ability to issue notices that people be subject to income management.

The Northern Territory Government has passed the *Alcohol Harm Reduction Act 2017* (NT) (the **NT Act**). The NT Act repeals the AMT Act and, in its place, establishes a framework for making banned drinker orders (BDOs) to enable adults to be registered on the banned drinker register (BDR).

Section 3 of the NT Act provides that the object of the NT Act is:

...to reduce the harm associated with the misuse of alcohol and improve the health, safety and wellbeing of people in the Territory by providing a legislative framework for:

- (a) *making banned drinker orders to enable adults to be registered on the banned drinker register; and*
- (b) *preventing the misuse of alcohol; and*
- (c) *protecting people who are misusing alcohol from severe or serious harm because of the misuse; and*
- (d) *protecting people, particularly children, from harm or nuisance resulting from the misuse of alcohol by others.*

Section 27 of the NT Act states that:

... the BDR Registrar may make an order than an adult is required to be subject to income management, if the BDR Registrar is satisfied that:

- (a) *either:*
 - (i) *a BDO is in force for the adult for a period of 12 months; or*
 - (ii) *a BDO will be in force for the adult for a period of 12 months when the income management order comes into force; and*
- (b) *the adult would benefit from the making of an income management order; and*
- (c) *the adult, or the adult's partner, is an eligible recipient of a category H welfare payment under Part 3B of the Social Security Administration Act.*

The BDR Registrar will be located within the Northern Territory Department of Health as an officer or employee of this department.

The BDR Registrar has the functions conferred under the NT Act and may do all things necessary or convenient to be done for, or in relation to, the performance of the BDR Registrar's functions under the NT Act (see section 36 of the NT Act). Relevantly, the BDR Registrar will have responsibility for issuing notices requiring a person to be subject to income management under paragraph 123UFAA(1)(b) of the Act.

An income management order made under section 27 of the NT Act will be a reviewable decision under Schedule 1 of the NT Act. A person affected by an income management order can therefore seek review in the NT Civil and Administrative Tribunal of an order referring them onto income management.

Explanation of Provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on 1 January 2018.

Section 3 provides the Determination is made under subsection 123TGAA(1) of the *Social Security (Administration) Act 1999*.

Section 4 contains definitions that are used in the Determination, including the definition of ***Northern Territory Department of Health*** (discussed in greater further below in relation to section 6 of the Determination).

Section 5 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 provides that the Northern Territory Department of Health is a recognised State/Territory authority for the purposes of Part 3B of the Act. The Northern Territory Department of Health will be the Department administered by the Minister administering the *Alcohol Harm Reduction Act 2017(NT)* and will therefore meet the definition of ***Northern Territory Department of Health*** in section 4 of the Determination. The BDR Registrar will be located within the Northern Territory Department of Health and will have responsibility for issuing notices requiring a person to be subject to income management under paragraph 123UFAA(1)(b) of the Act.

Schedule 1 repeals the *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol Mandatory Treatment Tribunal) Determination 2013*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

Consultation on the Determination was undertaken with the Northern Territory Department of Health as well as the Commonwealth Department of Human Services as the service delivery agency.

Regulatory Impact Analysis

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

Statement of Compatibility with Human Rights

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

This Legislative Instrument is the *Social Security (Administration) (Recognised State/Territory Authority - Northern Territory Department of Health) Determination 2017* (the **Determination**).

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

Section 123TGAA of the *Social Security (Administration) Act 1999* (the **Act**) provides that the Minister may, by legislative instrument, determine that a specified department (or part of a department), a body or an agency of a State or Territory is a recognised State/Territory Authority for the purposes of Part 3B of the Act. The Determination is made under this section, specifying the Northern Territory Department of Health as a recognised State/Territory Authority.

The *Alcohol Harm Reduction Act 2017* (NT) (the **NT Act**) establishes a framework for making banned drinker orders (**BDOs**) to enable adults to be registered on the banned drinker register (**BDR**).

Section 3 of the NT Act provides that the object of the NT Act is:

...to reduce the harm associated with the misuse of alcohol and improve the health, safety and wellbeing of people in the Territory by providing a legislative framework for:

- (e) making banned drinker orders to enable adults to be registered on the banned drinker register; and*
- (f) preventing the misuse of alcohol; and*
- (g) protecting people who are misusing alcohol from severe or serious harm because of the misuse; and*
- (h) protecting people, particularly children, from harm or nuisance resulting from the misuse of alcohol by others.*

Section 27 of the NT Act states that:

... the BDR Registrar may make an order that an adult is required to be subject to income management, if the BDR Registrar is satisfied that:

- (d) *either:*
- (i) *a BDO is in force for the adult for a period of 12 months; or*
 - (ii) *a BDO will be in force for the adult for a period of 12 months when the income management order comes into force; and*
- (e) *the adult would benefit from the making of an income management order; and*
- (f) *the adult, or the adult's partner, is an eligible recipient of a category H welfare payment under Part 3B of the Social Security Administration Act.*

The BDR Registrar will be located within the Northern Territory Department of Health as an officer or employee of this department.

The BDR Registrar has the functions conferred under the NT Act and may do all things necessary or convenient to be done for, or in relation to, the performance of the BDR Registrar's functions under the NT Act (see section 36 of the NT Act). Relevantly, the BDR Registrar will have responsibility for issuing notices requiring a person to be subject to income management under paragraph 123UFAA(1)(b) of the Act.

An income management order made under section 27 of the NT Act will be a reviewable decision under Schedule 1 of the NT Act. A person affected by an income management order can therefore seek review in the NT Civil and Administrative Tribunal of an order referring them onto income management.

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 United Nations Committee of Economic, Social and Cultural Rights (the UN Committee) 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 form of education*'.

Income management, which restricts what welfare can be spent on, does not detract from the eligibility of a person to receive welfare, nor reduce the amount of a person's social security entitlement. Rather, these arrangements provide a mechanism to ensure that certain recipients of social security entitlements use a proportion of their entitlement to acquire essential items

(known as 'priority needs'), including all of those referred to by the UN Committee.

The UN Committee has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'. Income management 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. Income management does not reduce a person's social security payment, it just changes the way the person receives them.

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*'.

This Determination will not impact on or interfere with a person's right to pursue freely their economic, social or cultural development.

Under income management, a certain portion of a person's welfare payment must be directed towards priority needs, such as food and housing. This requirement ensures that vulnerable people are able to pay for life's essentials and are not spending these funds on harmful goods such as alcohol.

The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided by 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 results 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*'.

Income management does not directly limit the rights of equality and non-discrimination. The program is not applied on the basis of race or cultural factors. Rather, participation in the program is based on a set of objective criteria.

While income management does not *directly* limit the rights to equality and non-discrimination, it may *indirectly* limit these rights. Across the national program, around 80 per cent of income management participants are Indigenous. However, measures such as income management, which restrict what welfare can be spent on, are aimed at achieving legitimate objectives and are not applied on the basis of race or cultural factors, as outlined above.

Income management operates in a range of locations, which were chosen based on demonstrated high levels of disadvantage indicated by a range of factors which are reasonable, objective and non-race based, such as the number of people receiving welfare payments and the length of time people have been receiving welfare payments.

There are also a range of different income management measures, which are designed to be targeted towards supporting vulnerable people and to respond to particular areas of need.

To the extent that income management measures may disproportionately affect Indigenous people, any such limitation is reasonable and proportionate to achieve its objectives.

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 programs,*' should be taken in '*recognising the fundamental right of everyone to be free from hunger*'.

Income management does not limit the right to an adequate standard of living, as the program supports individuals to achieve and maintain an adequate standard of living through the purchase of essential goods and services, including food, clothing, water and housing. These essential goods are all classified as priority needs under Part 3B of the Act and income managed funds can be used to purchase them. The program therefore aims to advance this right by ensuring that money is available for priority goods and services, such as housing, food and clothing, in situations where individuals need additional support to meet these needs. In turn, this helps stabilise an individual's living circumstances and financial situation, enabling them to focus on caring for children and/or joining or returning to work.

The rights of children

By ensuring that a portion of welfare payments are used to cover essential goods and services, income management can improve living conditions for the children of welfare payment recipients. It advances the right of children to benefit from social security, have access to education, 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 International Convention on the Rights of the Child, respectively).

The right to a private life

Article 17 of the ICCPR sets out the right to a private life. It prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home.

Income management seeks achieve the legitimate objective of directing welfare towards priority needs such as housing, food and clothing. This limitation is directly related to the objective of ensuring priority needs are met.

By limiting a person's choice in how they access and spend their money, income management impacts on the right to a private life. However, the program could not meet its objective if it did not restrict a participant's ability to spend their welfare payment. This limitation on a person's right to a private life is reasonable and proportionate to achieve income management's objectives of ensuring income support payments are used to meet the essential needs of vulnerable people and their dependents.

Conclusion

This Determination is compatible with human rights. The recognition of the Northern Territory Department of Health as an income management referring authority 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 the Determination may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of income management.

The Hon Christian Porter MP, Minister for Social Services