

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security (Administration) Act 1999

*Social Security (Administration) (Trial of Cashless Welfare Arrangements)
Determination 2018*

Purpose

This Determination is made by the Minister for Social Services under subsection 124PD(2), section 124PE, subsection 124PG(1), section 124PI, subsection 124PJ(3) and subsection 124PJ(4) of the *Social Security (Administration) Act 1999* (the Act).

Subsection 124PD(2) of the Act authorises the Minister to make a legislative instrument that determines that part of a trial area, that would otherwise be in a trial area for the purposes of the cashless debit card trial under Part 3D of the Act (the Trial), is excluded from the definition of **trial area** in subsection 124PD(1) of the Act. This Determination excludes the locality of Plumridge Lakes from the Goldfields trial area.

Section 124PG of the Act sets out who will be participants in the Trial. This Determination determines the class of participants in the Trial for the Goldfields trial area, East Kimberley trial area and the Ceduna trial area.

For the East Kimberley trial area and the Ceduna trial area the Determination revokes and remakes the determinations previously in place for these trial areas as these determinations contained certain provisions that can no longer be included in a legislative instrument following amendments to the Act made by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018*.

East Kimberley and Ceduna, which have been trial areas since 2016, will continue to be trial areas until 30 June 2019. Any extension of these sites or the Goldfields site beyond 30 June 2019 will require further amending legislative instruments as well as amended primary legislation.

The Determination otherwise retains provisions in the former Ceduna and East Kimberley determinations made under subsection 124PG(1) of the Act which determined the class of trial participants for the Ceduna and East Kimberley trial areas.

This determination also repeals and remakes the following four legislative instruments made by the Minister under Part 3D of the Act:

- *Social Security (Administration) (Trial – Community Body – Ceduna Region Community Panel) Authorisation 2016* (the Ceduna Region Community Panel Determination);

- *Social Security (Administration) (Trial — Community Body – East Kimberley Region Community Panels) Authorisation 2016* (the East Kimberley Region Community Panel Determination);
- *Social Security (Administration) (Trial — Excluded Voluntary Participants) Determination 2016* (the Excluded Voluntary Participants Determination); and
- *Social Security (Administration) (Trial - Variation of Percentage Amounts) Determination 2016* (the Variation of Percentage Amounts Determination).

These four legislative instruments were due to cease operation on 30 June 2018. This Determination will extend their operation until 30 June 2019. These legislative instruments have been in place since 2016.

Sections 7 to 9 of this Determination commence on 26 March 2018 and will be repealed at the start of 1 July 2019. These sections relate to the extension of the Trial to the Goldfields area.

The other sections of this Determination commence on the day this Determination is registered on the Federal Register of Legislation and will be repealed at the start of 1 July 2019.

Background

The Trial tests 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.

The Trial tests 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 also tests whether cashless welfare arrangements are more effective when community bodies are involved.

The Trial has been conducted in two locations, the East Kimberley and Ceduna regions, 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.

Goldfields trial area

Following amendments to the Act made by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018* the Goldfields area will become the third trial area.

This Determination will determine the precise scope of the Goldfields trial area for the purposes of subsection 124PD(1) of the Act by excluding the locality of Plumridge Lakes from the Goldfields trial area. The Determination will also set out

the class of persons in the Goldfields area that will be participants in the Trial for the purposes of subsection 124PG(1) of the Act.

The Goldfields area was selected as a third trial area based on the support of community leaders for its introduction and a demonstrable need identified. For example, Western Australia (WA) Police data indicated the domestic and non-domestic assault rate in the Goldfields is more than twice the state average. Alcohol is a factor in two thirds of all domestic assaults (2009-13) and half of all non-domestic assaults. Alcohol-related hospitalisations and deaths are 25 per cent higher than the WA state average in 2007-11.

Ceduna trial area

Ceduna was the first trial site, and the Trial commenced there on 15 March 2016 following the commencement of the *Social Security (Administration) (Trial Area – Ceduna and Surrounding Region) Determination 2015* (the 2015 Determination).

This Determination repeals and replaces the 2015 Determination with a new Determination. The 2015 Determination has been revoked and replaced as the result of amendments made by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018*. Following these amendments it is the Act that determines the boundaries of the trial site for the Ceduna trial area rather than a legislative instrument made under the Act.

This Determination also extends the duration of the Trial in Ceduna by replacing the current end date of 14 March 2018 with an end date of 30 June 2019.

The Determination otherwise retains the provisions in the 2015 Determination made under subsection 124PG(1) of the Act which determine the class of welfare recipients who are Trial participants in the Ceduna trial area.

East Kimberley trial area

East Kimberley was the second trial site, and the Trial commenced there on 26 April 2016 following the commencement of the *Social Security (Administration) (Trial Area - East Kimberley) Determination 2016* (the 2016 Determination).

This Determination repeals and replaces the 2016 Determination with a new Determination. The 2016 Determination has been revoked and replaced as the result of amendments made by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018*. Following these amendments it is the Act that determines the boundaries of the trial site for the East Kimberley trial area rather than a legislative instrument made under the Act.

This Determination also extends the duration of the Trial in East Kimberley by replacing the current end date of 25 April 2018 with an end date of 30 June 2019.

The Determination otherwise retains the provisions in the 2016 Determination made under subsection 124PG(1) of the Act which determine the class welfare recipients who are Trial participants in the East Kimberley trial area.

While the early indications of the Trial's impact in Ceduna and East Kimberley are positive, the Trial's extension will allow the Government to make fully informed decisions about the future of welfare conditionality in Australia.

Repeal and remaking of legislative instruments due to expire on 30 June 2018

This determination also repeals and remakes the following four legislative instruments made by the Minister under Part 3D of the Act:

- *Social Security (Administration) (Trial – Community Body – Ceduna Region Community Panel) Authorisation 2016* (the Ceduna Region Community Panel Determination);
- *Social Security (Administration) (Trial — Community Body – East Kimberley Region Community Panels) Authorisation 2016* (the East Kimberley Region Community Panel Determination);
- *Social Security (Administration) (Trial — Excluded Voluntary Participants) Determination 2016* (the Excluded Voluntary Participants Determination); and
- *Social Security (Administration) (Trial - Variation of Percentage Amounts) Determination 2016* (the Variation of Percentage Amounts Determination).

These four legislative instruments were due to cease operation on 30 June 2018. This Determination will extend their operation until 30 June 2019. These legislative instruments have been in place since 2016.

The Ceduna Region Community Panel Determination and East Kimberley Region Community Panel Determination were made under section 124PE of the Act and authorised the Ceduna Region Community Panel (authorised since March 2016), Kununurra Community Panel and the Wyndham Community Panel (authorised since May 2016) as community bodies for the purposes of the Trial.

The Variation of Percentage Amounts Determination was made under subsections 124PJ(3) and (4) of the Act and allowed for a participant in the Trial, in certain limited circumstances, to have the full amount of their welfare payment paid to their regular bank account, where it could be accessed in cash.

The Excluded Voluntary Participants Determination was made under section 124PI of the Act and determined the class of people who could not be voluntary participants in the Trial. The Determination is a legislative instrument under the *Legislation Act 2003*.

Commencement

Sections 7 to 9 of this Determination commence on 26 March 2018 and will be repealed at the start of 1 July 2019.

Sections 1 to 6 and 10 to 19 (and Schedule 1) of the Determination commence the day this Determination is registered on the Federal Register of Legislation and will be repealed at the start of 1 July 2019.

Consultation

Goldfields

The Government has undertaken an extensive consultation process leading up to implementation of the program. Between May and December 2017 there have been over 170 meetings, with more than 300 people, involving over 86 different organisations.

Issues raised during these stakeholder consultations include:

- confusion between the BasicsCard and the Cashless Debit Card
- concerns in relation to stigmatisation and disempowerment of program participants
- adequate local partner arrangements
- ongoing provision of appropriate information.

To resolve confusion between the BasicsCard and the cashless debit card, Departmental staff explained the difference between the Income Management and Cashless Debit Card programs. Staff explained that while the BasicsCard only works at specific approved merchants, the cashless debit card is a standard Visa debit card that can be used at any merchant that accepts EFTPOS, except those selling alcohol or gambling. Officials outlined how the card is attached to an account which operates like a normal, mainstream banking product. It provides a range of flexible payment options including online transfers, BPAY, online shopping at approved merchants, and recurring deductions. The only time the card cannot be used is for the purchase of alcohol or gambling products, or to withdraw cash.

In many cases, an explanation of how the cashless debit card worked addressed concerns raised during the discussion. In particular, explanation of how the card works addressed concerns regarding stigmatisation and disempowerment. Community members were reassured by the fact that the card is universally accepted and operates as a standard debit card, with no separate queues for people who want to use the card at a store.

The Department of Social Services also held 10 community information sessions in Kalgoorlie, Leonora, Laverton, Coolgardie, Kambalda and Norseman, attended by more than 200 people. The sessions were open to the public and held at a range of times to ensure maximum community attendance. Consultations focussed on understanding the social issues in the region and providing information about how

the cashless debit card works. To maximise engagement effort, the Department explored ways to connect with community members in less formal settings including small group sessions. While the Department heeded advice not to seek opinions from people immediately after explaining the program to them, but instead allow them time to digest the information and discuss with others in the community, many people volunteered their views. In addition, engagement occurred through established relationships to assist Departmental staff in meeting people in outlying Aboriginal communities.

Issues raised during the community information sessions included:

- timing and duration of the program
- technical issues, including availability of IT and phone charges
- dispelling misinformation about the functionality of the cashless debit card
- privacy concerns
- need for the program to be introduced
- how information about the program would be communicated to the community.

Departmental staff who attended the community information sessions provided factual information in response to issues raised. For example, information relating to the cashless debit card account functionality was provided to many participants including how participants could use the Indue app and could login through the online portal to complete online transfers. Common misconceptions about the program were also dispelled, including that the cashless debit card would not work at stores such as Aldi or that online transfers were not possible.

In terms of privacy concerns, Departmental staff noted how these issues were considered seriously by Government when developing the legislation that enables this Determination. It was noted that the legislation does not provide a blanket exemption from privacy laws for Government, Indue or the community panels. It simply allows the sharing of information that is necessary for the cashless debit card to operate. Staff also pointed out that safeguards are still in place to protect individual privacy and that any information shared between Indue and Government will occur within the requirements of the privacy laws, including the Australian Privacy Principles.

Engagement with the community as well as all of the feedback received was highly valuable in enabling the Department of Social Services to tailor communications products appropriately and ensure that program settings, including in relation to local partner arrangements, are suitable. To maintain this throughout the implementation phase, four reference groups were established in the region, consisting of shire representatives and community members, both Indigenous and non-Indigenous.

There was also feedback from consultations that providers need to work better together to support vulnerable people. Because of this feedback, the Department has also undertaken a high level analysis of Commonwealth government investment in the Goldfields region.

Ceduna

The Government, including officials from the Department of Social Services and Department of the Prime Minister and Cabinet have undertaken comprehensive engagement with people in Ceduna and the surrounding regions.

On 4 August 2015, key leaders from Maralinga Tjuratja (Oak Valley), the Ceduna Aboriginal Corporation, Yalata Community Incorporated, Koonibba Aboriginal Community Corporation, Scotdesco Aboriginal Corporation and the District Council in Ceduna signed a Memorandum of Understanding with the Commonwealth Government to participate in the trial. This was after a long, positive consultation process with the community leaders, proposed trial participants and merchants.

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
- differences between the trial and income management.

The CDC program was designed and implemented in close consultation with community leaders. Approximately 300 consultations were held in the Ceduna Region. Those consulted included Indigenous leaders, community members, service providers, police, and local and state government agencies.

Consultations continue in the Ceduna region and have extended through the implementation of the trial and beyond to ensure the community is prepared and have all necessary information and support for the trial.

East Kimberley

Extensive on-the-ground consultations have been occurring in the East Kimberley 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
- differences between the trial and income management.

The CDC program was designed and implemented in close consultation with community leaders. Approximately 110 consultations were held in the East Kimberley region. Those consulted included Indigenous leaders, community members, service providers, police, and local and state government agencies.

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

Ceduna Region Community Panel

In November 2015, a group of eight local leaders in the Ceduna region began the process of establishing the Ceduna Region Community Panel. This group held established and formally recognised community leadership positions that demonstrated a commitment to working towards a cohesive and safe community.

The group were involved in community activities that promoted positive and safe behaviour and wanted to volunteer their time and local understanding to promote a reduction in the amount of money spent on harmful goods such as alcohol, drugs and gambling.

From November 2015 until February 2016, the group, assisted by a Department of Social Services Officer, undertook comprehensive consultations with local service providers, the South Australian State Government and trial participants. During this period, the group met fortnightly to discuss development of the application process and developed guidelines to outline their objectives and values. Department of Social Services and Department of the Prime Minister and Cabinet staff were present at these meetings to observe and record this process.

East Kimberley Region Community Panels

Extensive on-the-ground consultations with community representatives occurred in the East Kimberley region to inform the implementation of the cashless debit card, and the development of community panels.

Consultations covered advice from community members about the identification of local and cultural protocol, key objectives, policy parameters (including percentages and boundaries), the establishment of community panels, and anticipated benefits of the trial in terms of community safety and wellbeing for vulnerable people, the identification of service gaps and servicing arrangements and the evaluation. Consultations in the East Kimberley region continued through the 12 month implementation of the trial to ensure the community was prepared and had 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 is a commencement provision for the Determination. In summary, this section provides that sections 7 to 9 of this Determination commence on 26 March 2018. These sections relate to the extension of the Trial to the Goldfields area.

The other sections of this Determination commence on the day this Determination is registered on the Federal Register of Legislation.

Section 3 states that this Determination is repealed at the start of 1 July 2019. It clarifies that the trial period ends on 30 June 2019. Subsection 124PF(1) of the Act

provides that cashless welfare arrangements are to be trialled during the period beginning on 1 February 2016 and ending on 30 June 2019.

Section 4 states that the Determination is made under subsection 124PD(2), section 124PE, subsection 124PG(1), section 124PI, subsection 124PJ(3) and subsection 124PJ(4) of the Act.

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. There is only one Schedule to the Determination and this is Schedule 1. Schedule 1 provides for the repeal of the 2015 Determination (for Ceduna) and the 2016 Determination (for East Kimberley). These instruments are being repealed as this Determination will set out who the Trial participants are in the Ceduna and East Kimberley areas. Schedule 1 also provides for the repeal of the Ceduna Region Community Panel Determination, the East Kimberley Region Community Panel Determination, the Excluded Voluntary Participants Determination and the Variation of Percentage Amounts Determination.

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.

Section 6 defines terms used in this 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 6 of the Determination.

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 has the meaning given by subsection 23(1) of the Social Security Act.

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

cashless welfare card means a debit card issued to a participant and which is linked to an account that is a welfare restricted bank account.

Ceduna Region Community Panel means the unincorporated body established by local leaders in Ceduna.

intervening occurrence means:

- (a) a technological fault or malfunction with a participant's cashless welfare card;
- (b) a technological fault or malfunction with a participant's welfare restricted bank account; or

(c) a natural disaster.

Kununurra Community Panel means the unincorporated body established by local leaders in Kununurra.

outside trial area student means:

- (d) a full-time student for the purposes of Part 3B of the Act; or
- (e) a person receiving a payment under the scheme known as the ABSTUDY Scheme that includes an amount identified as living allowance; or
- (f) a person receiving pensioner education supplement at a fortnightly rate provided for by subsection 1061PZG(2) of the Social Security Act; or
- (g) a person who is receiving youth allowance as a new apprentice as defined in subsection 23(1) of the Social Security Act; or
- (h) a person who is receiving an Austudy payment; or
- (i) 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 a trial area for the purposes of meeting study requirements.

participant means a trial participant or a voluntary participant.

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 by section 23 of the Social Security Act.

Plumridge Lakes means the locality of Plumridge Lakes referred to in the definition of the Goldfields – Esperance Police District in Schedule 1 to the *Police Districts Notice 2017 (Western Australia)*.

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

urgent payment means a payment of a person's social security periodic payment under subsection 43(1) of the Act which is made before the person's usual payment date because the person is in severe financial hardship as a result of exceptional and unforeseen circumstances.

Wyndham Community Panel means the unincorporated body established by local leaders in Wyndham.

Section 7 provides that for the purposes of the definition of trial area in subsection 124PD(1) of the Act, Plumridge Lakes is determined. This has the effect of excluding Plumridge Lakes in the Shire of Menzies, Western Australia from the definition of trial area in subsection 124PD(1) of the Act. Subsection 124PD(2) of the Act authorises the Minister to make a legislative instrument that determines that part of a trial area, that would otherwise be in a trial area for the purposes of the cashless debit card trial, is excluded from the trial area in subsection 124PD(1) of the Act. The definition of the Goldfields area, which is one of the three areas in the definition of trial area in subsection 124PD(1) of the Act includes the Shire of Menzies. The locality of Plumridge Lakes forms part of this shire. At this stage, it is not the intention to roll out the Trial in this part of the Goldfields and section 7 therefore excludes this locality from the trial area.

Section 8 specifies that all the trigger payments listed in subsection 124PD(1) of the Act will apply in relation to the Goldfields area, and in respect of persons of a specified class. That class is persons who:

- (i) do not have a Part 3D payment nominee; and
- (ii) are not subject of a determination made by the Secretary under subsection 43(3A) of the Act, relating to weekly payments for persons in hardship; and
- (iii) have not reached pension age and will not reach pension age during the 12 month period commencing 26 March 2018; and
- (iv) are not subject to the income management regime under section 123UC (child protection) or 123UF (Queensland Family Responsibilities Commission) of the Act; and
- (v) are not subject to the income management regime under section 123UCB or 123UCC of the Act because subsection 123UCB(3) or subsection 123UCC(3) applies to the person; and
- (vi) are not an outside trial area student; and
- (vii) are not the subject of a determination by the Secretary under section 9 of this Determination.

Section 9 provides that the Secretary may determine that a person, who would otherwise be in a class of persons determined in section 8, is not in a class of person for the purposes of subsection 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 determination is made, the person is no longer within the class of trial participants and no longer subject to the trial.

Section 10 provides that all the trigger payments listed in subsection 124PD(1) of the Act will apply in relation to the East Kimberley area ('East Kimberley' has the meaning given in the definition of 'trial area' in subsection 124PD(1) of the Act), and in respect of persons of a specified class. That class is persons who:

- (i) do not have a Part 3D payment nominee; and
- (ii) are not subject of a determination made by the Secretary under subsection 43(3A) of the Act, relating to weekly payments for persons in hardship; and
- (iii) are not subject to the income management regime under section 123UC (child protection) or 123UF (Queensland Family Responsibilities Commission) of the Act; and
- (iv) are not subject to the income management regime under section 123UCB or 123UCC of the Act because subsection 123UCB(3) or subsection 123UCC(3) applies to the person; and
- (v) are not an outside trial area student; and
- (vi) are not the subject of a determination by the Secretary under section 11 of this Determination.

Section 11 provides that the Secretary may determine that a person, who would otherwise be in a class of persons determined in section 10, is not in a class of person for the purposes of subsection 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 determination is made, the person is no longer within the class of trial participants and no longer subject to the trial.

Section 12 provides that all the trigger payments listed in subsection 124PD(1) of the Act will apply in relation to the Ceduna area ('Ceduna area' has the meaning given in the definition of 'trial area' in subsection 124PD(1) of the Act), and in respect of persons of a specified class. That class is persons who:

- (i) do not have a Part 3D payment nominee; and
- (ii) are not subject of a determination made by the Secretary under subsection 43(3A) of the Act, relating to weekly payments for persons in hardship; and
- (iii) are not subject to the income management regime under section 123UC (child protection) or 123UF (Queensland Family Responsibilities Commission) of the Act; and

- (iv) are not subject to the income management regime under section 123UCB or 123UCC of the Act because subsection 123UCB(3) or subsection 123UCC(3) applies to the person; and
- (v) are not an outside trial area student; and
- (vi) are not the subject of a determination by the Secretary under section 13 of this Determination.

Section 13 provides that the Secretary may determine that a person, who would otherwise be in a class of persons determined in section 12, is not in a class of person for the purposes of subsection 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 determination is made, the person is no longer within the class of trial participants and no longer subject to the trial.

Section 14 provides that the Kununurra Community Panel and the Wyndham Community Panel are authorised as community bodies for the purposes of Part 3D of the Act. The effect of this is that these panels can continue to exercise the powers and functions conferred on a community body by sections 124PK and 124PO of the Act until this Determination is repealed at the start of 1 July 2019.

Section 15 provides that the Ceduna Region Community Panel is authorised as a community body for the purposes of Part 3D of the Act. The effect of this is that the Ceduna Region Community Panel can continue to exercise the powers and functions conferred on a community body by sections 124PK and 124PO of the Act until this Determination is repealed at the start of 1 July 2019.

Section 16 provides that a person other than a person who has reached pension age, or a person who has not reached pension age (so will not be receiving age pension) but will reach pension age during the 12 month period commencing at the date the trial area in which the person has their usual place of residence became specified as a trial area, is in a class of person who may not be a voluntary participant.

Section 17 invokes the Minister's power in paragraph 124PJ(4)(a) of the Act to apply the varied amount of a participant's payment.

Section 17 of the Determination provides that the varied percentage amounts set out in section 18 of the Determination apply both:

- (a) in respect of a class of person comprising participants who are the subject of a determination by the Secretary under section 19 of this Determination; and
- (b) in relation to any trial area.

Section 18 invokes the Minister's power in subsection 124PJ(3) of the Act to vary the percentage amounts in paragraphs 124PJ(1)(a) and (b) of the Act and subsection 124PJ(2) of the Act.

Under section 18:

- (a) the percentage amount in paragraph 124PJ(1)(a) of the Act is varied to 0 per cent of the gross amount of the payment;
- (b) the percentage amount in paragraph 124PJ(1)(b) of the Act is varied to 100 per cent of the gross amount of the payment; and
- (c) the percentage amount in subsection 124PJ(2) of the Act is varied to 0 per cent of the gross amount of the payment.

Paragraphs 18(a) and (b) apply in relation to a participant who receives payments by instalments.

Paragraph 18(c) applies in relation to a participant who receives payments otherwise than by instalments.

If the Secretary determines that a participant is in a class of persons to whom section 19 of the Determination applies, the participant will have the restricted portion of their payment varied in accordance with this section. The effect of this is that the participant's restricted portion will be varied to 0 per cent and they will be able to receive 100 per cent of their payment by deposit to a bank account other than a welfare restricted bank account while the Secretary's determination is in force and they are in the relevant class of persons.

Section 19 provides that the Secretary may make a determination that a participant is within a class of persons to whom the Determination applies.

If the Secretary determines that a trial participant or voluntary participant is in a class of persons set out in section 19 of this Determination, the percentage amount of the participant's restricted portion will be reduced to 0 per cent in accordance with section 18 of the Determination.

Paragraphs 19(a) and (b) of the Determination set out two classes of persons in respect of whom the Secretary may make a determination under section 19.

The **first class** in paragraph 19(a) is where the Secretary is satisfied that the participant is unable to use his or her cashless welfare card or access the participant's welfare restricted bank account as a direct result of an 'intervening occurrence'.

The concept of an 'intervening occurrence' is defined in paragraphs 6(a) to (c) of the Determination.

Paragraphs 6(a) and 6(b) of the definition of intervening occurrence are intended to address circumstances in which technological issues, either with a participant's card

or their welfare restricted bank account, prevent the participant from accessing a payment in their welfare restricted bank account. This can include circumstances in which the systems required to access a payment are offline due to a system error.

Paragraph 6(c) of the definition of intervening occurrence is intended to address circumstances in which a natural disaster (such as a bushfire, flood or severe storm) prevents the participant from using their cashless welfare card or welfare restricted bank account. In these circumstances it may be necessary to pay a person's payment into an account other than the participant's welfare restricted bank account.

The Secretary or delegate will consider making this determination once they become aware of facts which may indicate that a participant is unable to use their cashless welfare card or access their welfare restricted bank account for reasons set out in section 19. The determination will affect payments of the person's welfare payment while the determination is in force. However, if the Secretary ceases to be satisfied that the participant is unable to use their cashless welfare card or welfare restricted bank account for the reasons set out in section 19, the determination will be revoked and the person will no longer be in the class of persons under section 19, resulting in the restricted portion and unrestricted portion of the person's payment reverting to their default amount.

The **second class** in paragraph 19(b) is where the Secretary is satisfied that the participant is a participant to whom a restrictable payment is payable in instalments, and that any part of the restrictable payment is payable as either:

- (i) an urgent payment; or
- (ii) an advance payment pursuant to section 51 of the Act.

The concept of an 'urgent payment' is defined in section 6 of this Determination which is discussed above. Subparagraph 19(b)(i) of the Determination applies so that the Secretary may determine that where a person receives an urgent payment, the participant is in a class of persons to whom the Determination applies.

Subparagraph 19(b)(ii) of the Determination refers to an advance payment under section 51 of the Act.

Section 51 of the Act allows the Secretary to make advance payments to certain social security payment recipients where the Secretary is satisfied that a recipient would suffer severe financial hardship if required to wait until the end of the first instalment period (or the first instalment period after the resumption of a payment).

In certain circumstances an advance payment can be made to a social security claimant under section 51 of the Act prior to their release from gaol or psychiatric confinement if the Secretary thinks it is necessary to do so in order to ensure that the claimant, on release, will not suffer severe financial hardship.

Subparagraph 19(b)(ii) of the Determination applies so that the Secretary may determine that the participant is in a class of persons to whom the Determination applies.

Schedule 1 provides for the repeal of the 2015 Determination (for Ceduna), the 2016 Determination (for East Kimberley), the Ceduna Region Community Panel Determination, the East Kimberley Region Community Panel Determination, the Excluded Voluntary Participants Determination and the Variation of Percentage Amounts Determination.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Social Security (Administration) (Trial of Cashless Welfare Arrangements)
Determination 2018*

Overview of the Determination

This Determination is made by the Minister for Social Services under subsection 124PD(2), section 124PE, subsection 124PG(1), section 124PI, subsection 124PJ(3) and subsection 124PJ(4) of the *Social Security (Administration) Act 1999* (the Act).

Subsection 124PD(2) of the Act authorises the Minister to make a legislative instrument that determines that part of a trial area, that would otherwise be in a trial area for the purposes of the cashless debit card trial under Part 3D of the Act (the Trial), is excluded from the definition of **trial area** in subsection 124PD(1) of the Act. This Determination excludes the locality of Plumridge Lakes from the Goldfields trial area.

Section 124PG of the Act sets out who will be participants in the Trial. This Determination determines the class of participants in the Trial for the Goldfields trial area, East Kimberley trial area and the Ceduna trial area.

For the East Kimberley trial area and the Ceduna trial area the Determination revokes and remakes the determinations previously in place for these trial areas as these determinations contained certain provisions that can no longer be included in a legislative instrument following amendments to the Act made by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018*.

East Kimberley and Ceduna, which have been trial areas since 2016, will continue to be trial areas until 30 June 2019.

The Determination otherwise retains provisions in the former Ceduna and East Kimberley determinations made under subsection 124PG(1) of the Act which determined the class of trial participants for the Ceduna and East Kimberley trial areas.

This determination also repeals and remakes the following four legislative instruments made by the Minister under Part 3D of the Act:

- *Social Security (Administration) (Trial – Community Body – Ceduna Region Community Panel) Authorisation 2016* (the Ceduna Region Community Panel Determination);
- *Social Security (Administration) (Trial – Community Body – East Kimberley Region Community Panels) Authorisation 2016* (the East Kimberley Region Community Panel Determination);

- *Social Security (Administration) (Trial — Excluded Voluntary Participants) Determination 2016* (the Excluded Voluntary Participants Determination); and
- *Social Security (Administration) (Trial - Variation of Percentage Amounts) Determination 2016* (the Variation of Percentage Amounts Determination).

These four legislative instruments were due to cease operation on 30 June 2018. This Determination will extend their operation until 30 June 2019. These legislative instruments have been in place since 2016.

Sections 7 to 9 of this Determination commence on 26 March 2018 and will be repealed at the start of 1 July 2019. These sections relate to the extension of the Trial to the Goldfields area.

The other sections of this Determination commence on the day this Determination is registered on the Federal Register of Legislation and will be repealed at the start of 1 July 2019.

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
- (b) determine whether such a reduction decreases violence or harm in the region
- (c) determine whether such arrangements are more effective when community bodies are involved
- (d) encourage socially responsible behaviour.

In other words, the cashless debit card has the objectives 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.

The community panel supports people who may request access to a higher proportion of 'unrestricted' funds. It does so on a case by case basis with consideration to the operational guidelines.

The community panel will consider applications by drawing on local knowledge to authenticate that, in granting the request, the applicant will not compromise the objectives of the trial. Panel decisions may encourage participants to work with local service providers to support and further reinforce the objectives of the trial.

Goldfields

In the Goldfields, there is clear evidence of the harm caused by alcohol. Recent Western Australia (WA) Police data show that between 2009 and 2013, alcohol was a factor in two thirds of all domestic assault offences and half of all non-domestic assault offences in the Goldfields region. This is 4.3 per cent and 14.4 per cent higher than the state average, respectively. In this past year (2016-17), Goldfields residents were more than twice as likely to be a victim of domestic or non-domestic assault as people living elsewhere in WA.

Between 2007 and 2011, the Goldfields region reported a statistically significant higher rate (1.25 times) of all alcohol-related hospitalisations than the corresponding state rate. Acute alcohol-related conditions that were significantly higher included assaults, road injuries and suicide.

As well as alcohol, illegal drug use is also causing intolerable levels of community harm in the Goldfields. Drug offenses have been rising in the Goldfields since 2009, and in 2013, residents were 2.5 times more likely to be charged with a drug-related offence than other WA residents. In this past year, WA Police data shows that Goldfields residents are also 1.5 times more likely to be charged with drug possession than other WA residents.

In a statement to the Senate Standing Committee for Community Affairs' inquiry into the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, Shire of Leonora CEO Mr James Epis said, "In the last three years, it has been devastating to see the escalation of antisocial behaviour between individuals caused by alcohol and drugs. This has often reached crisis levels." Shire of Laverton President Mr Patrick Hill told the Committee, "We are at wit's end. We want to see a safe community...We don't want to see this abuse. We don't want to see kids running around with dirty nappies on for a couple of days and no clothes."

In addition to unacceptable levels of alcohol, drug and gambling abuse, the Goldfields region also has a high level of welfare dependence among its residents. The then Minister for Human Services, the Hon. Alan Tudge MP, was invited by the Federal Member for O'Connor, Mr Rick Wilson MP, to meet with local leaders, including Indigenous leaders, to discuss how the cashless debit card could positively impact the community. After these meetings, Minister Tudge asked the Department of Social Services (the Department) to conduct an extensive consultation process with a wide range of stakeholders to further investigate social issues and gauge levels of support for the program. Consultations demonstrated that there is a willingness to participate from within the community and community members recognise that the cashless debit card program could be a key tool to tackling social harm.

Ceduna

In the Ceduna region, there is also clear evidence of the harm caused by alcohol in the community. The deaths of six Indigenous people related to alcohol abuse and sleeping rough were the subject of a coronial inquest in 2011. In March 2013, the Ceduna Sobering Up Unit had 89.7% occupancy, there were breath alcohol readings of 0.40, which is as high as the machine measures, as well as many readings in the 0.30 to 0.40 range.

In a submission to the Senate Standing Committee on Community Affairs, the Mayor of Ceduna, Mr Alan Suter, provided an unsigned affidavit stating that in his role, he has participated in various initiatives to assist with the problems caused by alcohol abuse in Ceduna. Mr Suter stated that the most effective attempt 'was a restriction of sales [which] reduced the availability of take away alcohol and helped considerably until it was withdrawn by the licensees.'

As well as alcohol, illegal drug use and gambling were also causing unacceptable levels of harm in the Ceduna region. The Ceduna region has a high level of welfare dependence, and, importantly, there is an openness to participate from within the community.

East Kimberley

In the East Kimberley, there is clear evidence of the harm caused by alcohol. For example, Western Australia (WA) Police data demonstrates that in 2013-14 there were 1,456 offences against the person for every 100,000 people in the East Kimberley region. The East Kimberley region had offence rates against the person 4.5 times that of overall WA figures. 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 people.

It is not 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.

Some welfare recipients are subject to income management under Part 3B of the Act. Persons whose usual place of residence is in East Kimberley, Ceduna or the surrounding region 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 who was 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 (who is a 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 do not need to conduct an investigation into the mental, physical or emotional wellbeing of every prospective trial participant. It is only where officers are made aware of specific facts which indicate that an individual's trial participation may seriously risk that person's mental, physical or emotional wellbeing that they need to consider making the administrative decision resulting in that person no longer falling within the class of persons who are trial participants.

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.

In February 2017, Orima Research released the Wave 1 Interim Evaluation Report on the Cashless Debit Card Trial Evaluation (the Report). The Report provided quantitative and qualitative analysis measured against predetermined key performance indicators and objectives of the Trial. The Report indicates that the Trial is having positive early impacts in relation to alcohol consumption, illegal drug use, and gambling in the trial regions.

On 1 September 2017, Orima Research released the Final Evaluation Report. The Final Evaluation Report concluded that the Cashless Debit Card “has been effective in reducing alcohol consumption and gambling in both trial sites and [is] also suggestive of a reduction in the use of illegal drugs.”

In particular, the Final Evaluation Report found that:

- Of people who drank alcohol, 41 per cent (up from 25 per cent in the Wave 1 survey) reported drinking alcohol less frequently; 37 per cent of binge drinkers were doing this less frequently (up from 25 per cent at Wave 1).
- Across the two trial sites, on average, of trial participants surveyed who reported they do gamble, 48 per cent reported gambling less (up from 32 per cent at Wave 1).
- Of trial participants who used illegal drugs before the trial, 48 per cent reported a reduction in illegal drug use since the trial commenced, compared to 24 per cent in Wave 1.

The evaluation also found the card has had “widespread positive spill-over benefits”. For example, 45 per cent of participants reported being able to save more money than before being a trial participant (up from 31 per cent at Wave 1).

General safeguards

A number of general safeguards that help to protect human rights have been incorporated into the program and into this Determination.

First, the rollout of the program in the Goldfields and the trial areas of Ceduna and the East Kimberley has been subject to an extensive consultation process. The Department has formed four implementation working groups across the five Local Government Areas of the Goldfields region to ensure ongoing community consultation. The working groups will be a link between the Government and the community to identify and resolve issues that are specific to that area, and to ensure that people are supported in their transition to using the cashless debit card effectively in their daily lives.

A second safeguard lies in the ongoing monitoring of the impact the program is having on the community. The monitoring strategy involves collecting and reporting on robust sets of data from a wide range of sources

The third safeguard is that this Determination is repealed at the start of 1 July 2019. This gives Parliament the opportunity to review the program again.

The right to a private life

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

The program seeks to achieve the legitimate objectives 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.

In order to achieve these objectives, the program places 80 per cent of restricted payments received by a person on a trigger payment into a restricted bank account. Funds held in this bank account are not able to be withdrawn as cash, or to be spent on alcohol or gambling products.

There is a clear, rational connection between the program's objectives detailed above and the restrictions on the right to a private life. The program could not prevent participants from purchasing these products if the program did not restrict how, and at what businesses, participants spend their social security payment. In turn, these restrictions on the purchase of alcohol, illegal drugs and gambling products by participants in the Goldfields region are designed to reduce alcohol fueled violence and harm, and to encourage socially responsible behaviour. Given the objectives of this Determination and the prevalence of social harm in the Goldfields, any limitation on the right to a private life is reasonable and proportionate.

In designing the cashless debit card, the Government worked closely with communities to reduce any stigma associated with use of the card. The card looks and operates like a normal bankcard. Additionally, the card applies to participants across the region, in order to limit the availability of discretionary cash. It does not apply punitively to individuals experiencing harmful addictions, financial instability or other forms of hardship. Furthermore, the Final Evaluation Report identified that only four per cent of participants surveyed raised stigma or shame with the card as an issue.

This Determination implements the program in the Goldfields, Ceduna and the East Kimberley until 30 June 2019 and in doing so contributes to continuing to limit how, and at what businesses, participants can spend their welfare payment. It does this by ensuring that transactions performed at businesses that sell certain products, including alcoholic beverages, gambling or gift cards that could provide access to cash, are declined. In doing so, this Determination engages the right to a private life. Any limitation to the right to a private life is directly related to minimising such harms

given limitations are placed on the execution of transactions at businesses that sell those products.

This Determination authorises the Ceduna Region Community Panel, the Kununurra Community Panel and the Wyndham Community Panel as a community body under the Act. In doing so, it establishes a mechanism through which applications for a decrease in the restricted proportion under the Act can be assessed against a set of criteria which indicates whether the applicant contributes to community harm or undermines positive social norms. This is the only routine mechanism through which a trial participant can alter the percentage of restrictable payment that is restricted.

As such, this Determination could be said to limit a person's choice in how they access and spend their money and engage 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. To protect the information of the applicant, panel members will be required to sign a non-disclosure confidentiality agreement with the Department of Social Services.

This Determination authorises the Kununurra Community Panel and Wyndham Community Panel as community bodies under the Act. In doing so, it establishes a mechanism through which applications for a decrease in the restricted proportion under the Act can be assessed against a set of criteria which indicates whether the applicant contributes to community harm or undermines positive social norms. This is the only routine mechanism through which a trial participant can alter the percentage of restrictable payment that is restricted. As such, this Determination could be said to limit a person's choice in how they access and spend their money and engage 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. To protect the information of the applicant, panel members will be required to sign a non-disclosure confidentiality agreement with the Department of Social Services.

The right to privacy

The Determination also engages the right to privacy. Community bodies will also have the power to vary the percentage of funds that a person has restricted, subject to that person's agreement. To allow this provision to operate, community bodies will need to be able to advise the Department of Human Services to change the percentage of funds a person has restricted.

This information sharing is allowed under the Act. The Act does not provide a blanket exemption from privacy laws for Government, or any community body. They only allow the sharing of information that is necessary for the trial to be implemented. This means there are still safeguards in place to protect individual privacy.

Government will still be required to act in accordance with privacy laws 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. The Ceduna Region Community Panel will only use trial participant's and voluntary participant's information with the participant's consent. The Kununurra Community Panel and Wyndham Community Panel will only use trial participant's and voluntary participant's information with the participant's consent.

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 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 program does not limit a person's right to social security nor reduce the amount of social security. However, it does restrict the way social security is received to limit a person's ability to spend their social security entitlement on alcohol, gambling and illegal drugs. The limitation on how social security payments are received and spent is that they are paid into a restricted bank account that restricts the purchase of alcohol and gambling products. This is necessary to ensure that these products cannot be purchased with the restrictable portion of participant's social security payments. Without the diversion of social security payments into a restricted bank account, welfare quarantining would not be possible and the objectives of the program could not be met. This Determination implements the program in the Goldfields, Ceduna and the East Kimberley until 30 June 2019 and so continues to restrict how social security is received to ensure that these objectives continue to be met.

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 program 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.

To the extent possible, the restricted bank account functions like a standard, mainstream bank account. This serves to minimise restrictions on the way social security is received. The cashless debit card itself is a standard Visa debit card that can be used at the vast majority of merchant that accepts EFTPOS. The account allows a range of flexible payment options including online transfers, BPAY, some online shopping and recurring deductions. As well as accessing these services online, a mobile application has been developed for use on smartphones. To support program participants, there are Local Partners on the ground who can assist with things such as a replacement cards and account balance checking. There are also online and mobile applications, as well as two telephone hotline services available through Indue and the Department.

The exemptions to the classes of persons who are program participants recognise and promote this right as they are designed to ensure individuals who could not fully participate in the program are not subject to restrictions on how they spend their welfare payments. Exemptions relate to issues such as location for outside trial area students, being subject to income management measures, having payment nominees receive welfare payments, or if being a participant would seriously risk the person's mental, physical or emotional wellbeing. Given the objectives of this Determination and the prevalence of social harm in program locations, any limitation on the right to social security is reasonable and proportionate.

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'.

This Determination implements the program in the Goldfields, Ceduna and the East Kimberley until 30 June 2019 and in doing so contributes to continuing to limit how, and at what businesses, program participants can spend their welfare payment. This promotes the right to an adequate standard of living. It means that people are able to use restricted funds to access any goods, with the exception of alcohol and

gambling products, with the aim of reducing abuse of these goods and the associated harm and violence. This Determination will not have the effect of restricting access to essential needs required to maintain an adequate standard of living. Access to some discretionary cash continues to be available, ensuring that people can still participate in cash economies to purchase items that contribute to an adequate standard of living.

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 *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 other groups, 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'.

This Determination does not directly limit the rights to equality and non-discrimination. This is because, as set out in this Determination, all program participants are subject to the same restrictions on how and at what businesses they can spend their welfare payment. This Determination is not targeted at people of a particular race, gender or cultural characteristic, but to program participants and voluntary program participants.

While this Determination does not directly limit the rights to equality and non-discrimination, it may indirectly limit these rights. In the Goldfields, Indigenous Australians are likely to make up approximately 45 per cent of those who will be CDC program participants and who will be affected by this Determination. In the East Kimberley and Ceduna regions, Indigenous people make up a substantial majority of the total income support payment population who are trial participants and who will be affected by this Determination.

It is acknowledged that Indigenous Australians comprise a large proportion of participants and those who will be affected by this Determination. It is also acknowledged that Indigenous Australians comprise a large proportion of those likely

to apply to the Kununurra Community Panel and Wyndham Community Panel. However, all trial participants can apply to the Panel. The Goldfields, Ceduna and the East Kimberley were chosen as the locations because of objective criteria, such as “high levels of welfare dependence and community harm, as well as the outcomes of comprehensive consultation with prospective communities.”¹ The Government also sought the support of key Aboriginal and Torres Strait Islander leaders in the region, to uphold its commitment to work with First Australians.

Most social security recipients who are permanent residents of the locations will become participants. The reason for this comprehensive coverage is that the community wide impacts of harmful goods mean that the cashless debit card program can best meet its objectives when significant numbers of people in a program region who receive a social security payment participate in the program. The resulting large proportion of Indigenous participants reflects the fact that the regions has a large proportion of Indigenous social security recipients. Selecting program locations because of high levels of community harm directly relate to the legitimate objectives of this Determination: to reduce high levels of community harm. In turn, this Determination affects only those who have been permanent residents of the locations, and those who volunteer for the program. Therefore, there is a rational connection between any limitation on the right to equality and non-discrimination and the objectives of this Determination.

Finally, given the objectives of the Act and this Determination, as well as the scale of unacceptable harm in the program area as discussed above, any limitation on the right to equality and non-discrimination is reasonable and proportionate.

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’.

It may appear that the right to self-determination is engaged by this Determination. However, any such engagement of this right is reasonable and proportionate given the extensive harm caused by alcohol and gambling in the program area (again, as discussed above). Any limitation of this right is also directly related to limiting such harm, given the restrictions in this Determination being placed on the execution of transactions at businesses that sell certain products including alcoholic beverages, gambling or gift cards.

¹ *Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, Explanatory Memorandum, Statement of Compatibility, p. 3.

The rights of children

By ensuring that a portion of welfare payments is available to cover essential goods and services, welfare quarantining can improve living conditions for the children of welfare recipients. Such measures thereby advance the right of children to the highest attainable standard of health and the right of children to adequate standards of living (articles 24, 26 and 27 of the Convention on the Rights of the Child, respectively).

Conclusion

This Determination is compatible with human rights. An extension of the program 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 objectives 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.