

## **EXPLANATORY STATEMENT**

Issued by the authority of the Group Manager, Redress and Reform Group, Department of Social Services

*Social Security (Administration) Act 1999*

*Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019*

### **Purpose**

The *Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019* (the Determination) is made by the Group Manager of the Redress and Reform Group, as delegate of the Secretary of the Department of Social Services.

The Determination is made for the purposes of Part 3D of the *Social Security (Administration) Act 1999* (the Act), which covers the trial of cashless welfare arrangements. The Determination is made under subsections 124PP(1) and 124PQ(2) of the Act, which provide, that the Secretary may, by legislative instrument, determine:

- a kind of bank account to be maintained by a trial participant or voluntary participant for the receipt of restrictable payments; and
- kinds of businesses in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution.

Subsection 124PP(2) of the Act provides that a legislative instrument determining a kind of bank account may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account so determined.

The purpose of the Determination is therefore to determine the kind of bank account to be maintained by a participant in the trial of cashless welfare arrangements, the terms and conditions relating to that bank account, and the kinds of businesses in relation to which transactions, involving money in those bank accounts, may be declined by a financial institution.

### **Background**

The trial of cashless welfare arrangements commenced on 1 February 2016. The purpose of the trial is to test whether limiting the available level of welfare cash in a community reduces the harmful effects of welfare funded alcohol, drug abuse and gambling.

Generally, participants in the trial receive 80 percent of their welfare payments ( in a welfare restricted bank account, which is accessed by a debit card which does not allow cash withdrawals. Money in a welfare restricted bank account also cannot be used to purchase alcoholic beverages, gambling, or cash-like products that could be used to obtain alcoholic beverages or gambling.

The trial of cashless welfare arrangements currently operates in the Ceduna region (South Australia), East Kimberley region (Western Australia), Goldfields region (Western Australia), and the Bundaberg and Hervey Bay region (Queensland).

Following amendments to the Act by the *Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019*, the end date of the trial in all sites is 30 June 2020. The Determination therefore supports the operation of the trial until 30 June 2020. An extension of the trial of cashless welfare arrangements beyond 30 June 2020 will require amendments to primary legislation.

## **Commencement**

The Determination commences on the day after it is registered on the Federal Register of Legislation.

## **Consultation**

An extensive consultation process was undertaken leading up to implementation of the trial of cashless welfare arrangements. Consultation continues with key stakeholders in each site, including discussion on program operations.

Consultations with Indue Limited have also been undertaken, which has informed the development of this Determination.

## **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required for the Determination (OBPR Reference 25267). The 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** provides that the name of the instrument is the *Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019*.

**Section 2** provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

**Section 3** provides that the authority for making the Determination is subsections 124PP(1) and 124PQ(2) of the *Social Security (Administration) Act 1999*.

**Section 4** provides definitions of terms used in the Determination. The note points to a number of definitions used in the Determination which are defined in Part 3D of the Act.

In this instrument:

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

***Excluded goods or services*** means goods or services mentioned in items 5(a), 5(b) and 5(c) of Schedule 5 to this instrument.

***Indue Limited*** means Indue Ltd (ABN 97 087 822 464).

***Merchant Category codes*** means the merchant category codes under ISO 18245:2003 of the International Organisation for Standardisation in force at the commencement of this instrument.

***Australian and New Zealand Standard Industrial Classification codes*** means the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006 in force at the commencement of this instrument.

***trial period*** means the period specified in subsection 124PF(1) of the Act.

***welfare restricted bank account*** means a bank account of the kind referred to in section 7 of this instrument.

**Section 5** provides that the instrument specified in Schedule 1 to this instrument is repealed as set out in that Schedule.

**Schedule 1** provides for the repeal of the *Social Security (Administration) (Trial – Declinable Transactions and Welfare Restricted Bank Account) Determination 2018*. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal any such instrument.

**Section 6** provides that for the purposes of subsection 124PQ(2) of the Act, Schedule 2, Schedule 3 and Schedule 4 to the Determination set out the kinds of businesses in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution. The inclusion of this provision means that the financial institution, in declining such a transaction, will not contravene Part IV of the *Competition and Consumer Act 2010*.

**Section 7** provides that the kind of bank account to be maintained by a trial participant or voluntary participant for the receipt of restrictable payments during the trial of cashless welfare arrangements is a debit card account established with Indue Limited. Indue Limited provides financial payment products and settlement services, and has been engaged by the Commonwealth to provide welfare restricted bank accounts for the purposes of the trial of cashless welfare arrangements.

**Section 8** provides that the terms and conditions of a welfare restricted bank account include the terms and conditions set out in Schedule 5 to the Determination.

**Schedule 2, Schedule 3 and Schedule 4** set out, for the purposes of section 6 of the Determination, the kinds of businesses in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution.

Schedule 2 declares the relevant kinds of businesses by description. These businesses are those which sell alcoholic beverages, gambling services or cash-like products that could be used to obtain alcoholic beverages or gambling services (item 1). Item 2 provides for

businesses from which purchases may be made through online transactions or without the need to present a debit card and the transaction involving money in a welfare restricted bank account is proposed to be made without presenting a welfare restricted bank account debit card.

Schedule 3 declares the relevant kinds of businesses by reference to Merchant Category codes. A Merchant Category code is a four-digit number used to classify a business by the type of goods or services it provides. The Merchant Category codes are available on the International Organization for Standardization website at <https://www.iso.org/standard/33365.html>. Although the Merchant Category codes are not available to members of the public free of charge, they will be of most relevance to Indue Limited, who have access to the codes. The relevant Merchant Category codes are incorporated under subsection 124PQ(2) of the Act and paragraph 14(1)(b) of the *Legislation Act 2003*, as in force at the commencement of the Determination.

Schedule 4 declares the relevant kinds of businesses by reference to Australian and New Zealand Standard Industrial Classification (ANZSIC) codes. The ANZSIC codes are the standard classification used in Australia and New Zealand for the collection, compilation and publication of statistics by industry. The ANZSIC codes are available to the public free of charge on the Australian Bureau of Statistics website at [https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1292.0Main+Features12006%20\(Revision%202.0\)?OpenDocument](https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1292.0Main+Features12006%20(Revision%202.0)?OpenDocument). The relevant ANZSIC codes are incorporated under subsection 124PQ(2) of the Act and paragraph 14(1)(b) of the *Legislation Act 2003*, as in force at the commencement of the Determination.

**Schedule 5** sets out, for the purposes of section 8 of the Determination, terms and conditions relating to the establishment, ongoing maintenance and closure of a welfare restricted bank account. Schedule 5 is not intended to exclude Indue Limited from implementing other terms and conditions. In particular, the bank account established with Indue Limited may be subject to other terms and conditions that are similar in nature to the terms and conditions of a regular bank account.

The purpose of Schedule 5 is to set out the terms and conditions that are particular to a welfare restricted bank account. Trial participants and voluntary participants in the trial of cashless welfare arrangements should obtain the full set of terms and conditions for their welfare restricted bank account from Indue Limited.

The terms and conditions set out in Schedule 5 include:

1. **Single name:** the welfare restricted can only be opened in a single name and operated by the sole holder of the account. This means that it will not be possible for the account to be opened in joint names, and no one other than the holder will be able to operate the account.
2. **Debit card provided:** a debit card will be provided to the holder of a welfare restricted bank account. The debit card is a key feature of the trial of cashless welfare arrangements and a trial participant or voluntary participant will be able to use that card to purchase goods and services.

3. Depositing of cash: any amount of cash can be deposited into a welfare restricted bank account. This term makes it clear that a trial participant, a voluntary participant or another person can deposit money into a welfare restricted bank account.
4. No withdrawal of cash: cash cannot be withdrawn from a welfare restricted bank account, whether through the use of a debit card attached to the account or by other methods of withdrawal.
5. Systems in place to prevent purchase of excluded goods or services: systems are in place which, so far as possible, prevent money in a welfare restricted bank account, and a debit card attached to that account, being used to purchase alcoholic beverages, gambling or cash-like products that could be used to obtain alcoholic beverages or gambling. Cash-like products may include gift cards, store cards or vouchers.
6. Systems in place to prevent transferring of money: systems are in place which, so far as possible, prevent a trial participant or voluntary participant transferring money from a welfare restricted bank account to another bank account that is not a welfare restricted bank account. An exception to this term applies if the money is transferred for a purpose other than enabling the trial participant or voluntary participant to access cash or obtain excluded goods or services.
7. Purchasing goods or services over the telephone or internet: the debit card attached to the welfare restricted bank account may be used to purchase goods or services over the telephone or internet, or without presenting the debit card. However, alcoholic beverages, gambling or cash-like products that could be used to obtain alcoholic beverages or gambling cannot be purchased over the telephone or internet.
8. No fees: fees will not be charged by Indue Limited in relation to depositing money into a welfare restricted bank account, or in relation to providing a debit card attached to a welfare restricted bank account to a trial participant or voluntary participant.
9. No interest: interest will not be charged by Indue Limited on a balance in a welfare restricted bank account that is less than zero. The balance of a trial or voluntary participant's cashless debit card generally cannot be overdrawn, although there may be exceptional circumstances that result in a participant's welfare restricted bank account having a negative balance. In these circumstances, Indue Limited cannot charge fees.
10. Closure of account: a welfare restricted bank account provided to a person may be closed during the trial period only if the person is not a trial participant. The trial period is the period of 1 February 2016 to 30 June 2020, as mentioned in section 124PF of the Act. It would defeat the purpose of the trial of cashless welfare arrangements if a trial participant could unilaterally close an account during the trial while the person is a trial participant. There are no restrictions on a voluntary participant closing a welfare restricted bank account during the trial, as voluntary participants do not fall within the definition of 'trial participant' (see section 124PD of the Act).
11. Automatic drawing or withdrawal of monies by a third party: a welfare restricted bank account may be used in an arrangement involving automatic drawing or withdrawal of

monies by a third party that is based on BSB and account number. Such arrangements can generally be made for regular bills, rent and some loans (such as a mortgage).

12. Limitations on spending of amounts: limitations may be placed on the amounts a trial participant or voluntary participant can spend using a debit card attached to a welfare restricted bank account. Currently, the initial limit set on a participant's debit card is \$1,000 per day; however, this limit can be increased to a maximum of \$5,000 per day. This limitation is set out in Indue Limited's Cashless Debit Card Account Conditions of Use. The Conditions of Use are provided to trial participants and voluntary participants with their debit card, and are available on Indue Limited's website.
13. Limitations on transfer of amounts: limitations may also be placed on the amounts a particular holder of a welfare restricted bank account can transfer out of her or his account. Currently, a participant is generally subject to a transfer limit of \$200 every 28 days if the participant wants to transfer money from their welfare restricted bank account to an account that is not a welfare restricted bank account, for a purpose other than for a housing payment.
14. Limitations to prevent money being used to purchase excluded goods or services: limitations may be placed on the debit card attached to a welfare restricted bank account prevent money in the bank account being used to purchase alcoholic beverages, gambling, or cash-like products that could be used to obtain alcoholic beverages or gambling.

## Statement of Compatibility with Human Rights

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

### **Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019**

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**

This Determination is made by the Group Manager, Redress and Reform Group, as a delegate of the Secretary of the Department of Social Services, under subsections 124PP(1) and 124PQ(2) of the *Social Security (Administration) Act 1999* (the Act).

Section 124PM of the Act sets out limitations on the expenditure of portions of welfare payments by trial and voluntary participants, namely that these portions may not be used to purchase alcoholic beverages, gambling, or cash-like products. The Determination supports arrangements for the cashless debit card trial under Part 3D of the Act (the Trial), by setting out the detail of how limitations imposed under section 124PM are to be implemented.

Subsection 124PP(1) of the Act provides that the Secretary may, by legislative instrument, determine a kind of bank account to be maintained by a trial participant or voluntary participant in the Trial. This Determination sets out the kind of bank account to be maintained by a participant in the Trial.

Subsection 124PP(2) of the Act provides that the legislative instrument determining a kind of bank account may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account. This Determination prescribes these terms and conditions.

In accordance with subsection 124PQ(2) of the Act, the Secretary may by legislative instrument declare a kind of business, whether by reference to merchant category codes, terminal identification codes, card accepted identification codes or otherwise, in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution. The Determination declares kinds of businesses in relation to which transactions may be declined by a financial institution.

#### **Human rights implications**

##### Objectives

The objectives of the cashless debit card, set out in Part 3D of the Act, are to:

- (a) reduce the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs; and
- (b) determine whether such a reduction decreases violence or harm in the trial areas; and

- (c) determine whether such arrangements are more effective when community bodies are involved; and
- (d) encourage socially responsible behaviour.

The rollout of the cashless debit card in existing locations was subject to an extensive community consultation process. Discussions in relation to the continued operation of the program with key stakeholders in each location are ongoing.

### The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises ‘the right of everyone to social security, including social insurance’. The United Nations Committee of Economic, Social and Cultural Rights (the UN Committee) has stated that implementing this right requires a country, within its maximum available resources, to provide ‘a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic form of education’.

Across all cashless debit card sites, the right to social security is limited only in the participant’s ability to use a proportion of their payment to purchase harmful goods, in an area where there are demonstrated high levels of community harm.

The program does not detract from the eligibility of a person to receive welfare, nor reduce the amount of a person’s social security entitlement. Rather, it places a limitation on how payments can be spent and provides a mechanism to ensure that certain recipients of social security entitlements are restricted from spending money on alcohol, gambling and illegal drugs.

Under both schemes, a portion of social security payments received by a participant are quarantined, with restricted goods not able to be purchased using this portion. Under the cashless debit card, funds are held in a restricted bank account, and cannot be withdrawn as cash, or used to purchase alcohol, gambling products or ‘cash-like’ products that could be used to obtain alcoholic beverages or gambling. Businesses which sell restricted items or products may service participants, where they have systems in place that do not allow the sale of these products to holders of a cashless debit card. These limitations are necessary to ensure that restricted products cannot be purchased with the restrictable portion of a participant’s social security payment. Without the diversion of social security payments into a restricted bank account, welfare quarantining would not be possible and the objectives of the schemes, outlined above, could not be met.

Under the cashless debit card, and 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 majority of merchants that accept EFTPOS. The account allows for 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. There are also two hotline services operated by the card provider and the Department of Social Services to provide technical and practical support for participants.



Given the objectives of the cashless debit card, and the prevalence of social harm in the areas these schemes operate, any limitation on the right to social security is reasonable and proportionate.

### The right to a private life

The impact of the trial on the right to a private life and privacy has previously been raised.

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

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

By reducing a person's choice in how and where they access and spend their social security payments, the cashless welfare schemes limit the right to a private life. The cashless debit card program is targeted to communities where high levels of welfare dependence exist alongside high levels of social harm. This limitation on the right to a private life is directly related to the objectives of reducing such harm. This is because the limitations put in place restrict transactions at businesses selling goods that contribute to such harm.

Any limitation on a person's right to a private life is reasonable and proportionate given the extensive social harm discussed above under the section titled 'Objectives'. Ongoing community stakeholder discussions also provide an effective community safeguard over the extent of the restrictions imposed.

### 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'.

Under the cashless debit card, people are able to spend their restricted funds on any goods or services except alcohol, gambling and illegal drugs as a result of having less access to discretionary cash. The limitation on these products and services ensures that vulnerable people are protected from abuse of these substances, and any associated harm and violence, and will not impact on or interfere with a person's right to pursue freely their economic, social or cultural development.

### The right to an adequate standard of living

Article 11(1) of the ICESCR states that everyone has the right to 'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' and that 'appropriate steps' be taken to 'ensure realisation of this right'. Further to this, article 11(2) of the ICESCR states that 'measures, including specific programmes,' should be taken in 'recognising the fundamental right of everyone to be free from hunger'.

The cashless debit card does not limit the right to an adequate standard of living for affected people. Under the cashless debit card, people are able to use restricted funds to access any goods and services with the exception of alcohol and gambling products, or ‘cash-like’ products that could be used to obtain alcoholic beverages or gambling, with the aim of reducing abuse of these goods and services and associated harm and violence. The program does not restrict access to the essential goods and services required to maintain an adequate standard of living. Access to some discretionary cash is available to ensure that people can still participate in cash economies to purchase items which contribute to an adequate standard of living.

### **Conclusion**

The Determination is compatible with human rights. The cashless debit card program advances 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 objectives of the welfare quarantining measures. The cashless debit card program aims to reduce immediate hardship and deprivation, reduce violence and harm, encourage socially responsible behaviour, and reduce the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time.

**Bruce Taloni, Group Manager, Redress and Reform Group**