

## **EXPLANATORY STATEMENT**

### *Coronavirus Economic Response Package Omnibus Act 2020*

#### *Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020*

#### **Purpose**

The purpose of the *Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020* (this instrument) is to extend the end date for the Cashless Debit Card trial in all existing sites and Income Management in the Cape York region from 30 June 2020 to 31 December 2020.

#### **Background**

As part of the 2019-20 Budget, the Australian Government announced the transition of Income Management participants to the Cashless Debit Card in the Cape York region in Queensland in 2020 and the extension of existing Cashless Debit Card sites for a further year to 30 June 2021.

The Social Security (Administration) Amendment (Income Management to Cashless Debit Card) Bill 2019 which implements these budget measures has not yet passed. Due to the revision of parliamentary sittings in response to the COVID-19 pandemic, this Bill will not pass before the current expiry of CDC in all existing sites and Income Management in the Cape York region on 30 June 2020.

This instrument provides certainty to stakeholders and participants and ensures the continuation of the operation of the Cashless Debit Card trial in existing sites and Income Management in the Cape York region until 31 December 2020. By extending the end date by six months, this instrument ensures support for participants does not cease and avoids circumstances where a participant ceases to be on the CDC or Income Management for a brief period of time, while awaiting the consideration of primary legislation. It ensures participants can continue to access the benefits offered by the CDC and Income Management and do not need to change the way they receive income support payments during the COVID-19 pandemic.

The instrument is made under subitem 1(2) of Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020* (the **Act**).

Subitem 1(1) of Schedule 16 to the Act provides that the relevant Minister for an Act or legislative instrument that is scheduled to cease to have operation on or before 15 October 2020 may determine a new day on which the legislation would cease to have operation. Under subitem 1(2), the new day on which the Act or legislative instrument would cease to have operation must be no longer than six months after the original sunset day. The power to extend the operation for an Act under Schedule 16 captures any legislative provisions within an Act that cease to have effect beyond a given date.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

### Cashless Debit Card

Part 3D of the *Social Security (Administration) Act 1999* (the **Administration Act**) established the Cashless Debit Card trial, which currently operates in four sites. These sites are the Ceduna region, South Australia, the East Kimberley and Goldfields regions, Western Australia, and the Bundaberg and Hervey Bay region, Queensland.

The Cashless Debit Card is designed to support people, families and communities in places where high levels of welfare dependence co-exist with high levels of social harm and it is working. It can assist participants as a helpful budgeting and financial management tool to provide them with assistance to budget better for their circumstances.

Under the Cashless Debit Card, 80 per cent of a participant's welfare payment is placed on a card that can be used at most shops, which accept Visa or eftpos, including overseas. The only time the card cannot be used is for the purchase of alcohol, gambling products, cash-like gift cards or to withdraw cash.

Under the Administration Act, the provisions providing for the operation of the Cashless Debit Card would cease to have effect beyond 30 June 2020, being the legislated trial end date. The effect of this instrument is to extend the operation of the Cashless Debit Card provisions for six months to 31 December 2020. This ensures communities and participants are able to continue to build on the positive outcomes that the Cashless Debit Card trial is delivering.

### Income Management

The Cape York Welfare Reform Income Management measure is established under section 123UF of the Administration Act and is delivered in partnership with the Family Responsibilities Commission (FRC). Cape York Welfare Reform aims to address passive dependence on welfare and support people in the communities of Aurukun, Coen, Hope Vale, Mossman Gorge and Doomadgee to resume primary responsibility for the wellbeing of their family and their community. The key aim of the initiative is to ensure that children are safe, fed and educated. Income Management forms part of the Cape York Welfare Reform.

Part 3B of the Administration Act establishes an Income Management regime that applies to recipients of certain welfare payments. If a person is subject to Income Management under Part 3B, the Secretary must deduct amounts from the person's relevant welfare payments and credit those amounts to the person's Income Management account, in accordance with Part 3B, for the purpose of taking actions directed to meeting the priority needs of the person and any dependants.

Under section 123UF of the Administration Act a person can only become subject to Income Management in the Cape York region if they are referred by the FRC. Under the Administration Act, subsections 123UF(1) and (2) which enable a person to be subject to Income Management in the Cape York region cease to have effect beyond 30 June 2020. This instrument extends the operation of these provisions for six months to 31 December 2020, to enable the continuation of Income Management in the Cape York region.

## **Commencement**

This instrument commences the day after it is registered on the Federal Register of Legislation.

## **Consultation**

The Department of Social Services (the department) has undertaken ongoing consultation and engagement to confirm support for the continuation of the Cashless Debit Card Trial in existing sites. The department has also consulted the Family Responsibilities Commission (FRC) regarding the extension of Income Management in the Cape York Region. The FRC has confirmed that it supports the extension to 31 December 2020, as implemented by this instrument.

## **Regulation Impact Statement (RIS)**

This instrument does not require a Regulatory Impact Statement (OBPR Reference: 24100).

## **Explanation of the provisions**

**Section 1** provides that the name of this instrument is the *Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020*.

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

**Section 3** provides that the authority for making this instrument is subitem 1(2) of Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020* (the **Act**).

**Section 4** provides for the deferral of the sunsetting dates for income management and the cashless welfare arrangements.

Subsection 4(1) provides that, for the purposes of subitem 1(2) of Schedule 16 to the Act, section 123UF of the Administration Act continues to operate until 31 December 2020. This has the effect of continuing the operation of Income Management in the Cape York region until 31 December 2020. All other Income Management areas will also continue to operate as they do not have a legislative end date.

Subsection 4(2) provides that, for the purposes of subitem 1(2) of Schedule 16 to the Act, Part 3D of the Administration Act continues to operate until 31 December 2020.

This has the effect of continuing the Cashless Debit Card trial until 31 December 2020.

Under items 3 and 4 of the table in section 36 of the *Acts Interpretation Act 1901*, where a period of time is expressed to continue until a specified day or to end at, or with a specified day, the time period includes that day.

**Senator the Hon Anne Ruston, Minister for Families and Social Services**

## Statement of Compatibility with Human Rights

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

### Coronavirus Economic Response Package (Deferral of sunseting – Income Management and Cashless Welfare Arrangements) Determination 2020

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the legislative instrument

The *Coronavirus Economic Response Package (Deferral of Sunseting – Income Management and Cashless Welfare Arrangements) Determination 2020* (this instrument) is made under subitem 1(2) of Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020* (the **Act**).

The purpose of this instrument is to extend the end date for the Cashless Debit Card trial in all existing sites and Income Management in the Cape York region from 30 June 2020 to 31 December 2020. This ensures the continuation of the Cashless Debit Card trial in existing sites and the operation of Income Management in the Cape York region.

#### Human rights implications

##### The right to social security

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

Under both the Cashless Debit Card trial and Income Management, 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 targeted communities, support from leaders is driven by the view that these measures can help address this harm, particularly where dependence is also high.

The operation of the Cashless Debit Card and Income Management do not detract from the eligibility of a person to receive welfare, nor reduce the amount of a person's social security entitlement. Rather, these programs place 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 drugs.

Given the objectives of the Cashless Debit Card trial and Cape York Income Management, 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

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 and Income Management seek 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 Debit Card and Income Management limit the right to a private life.

This limitation on the right to a private life is directly related to the objectives of these programs in reducing community and individual harm. This is because the limitations put in place restrict transactions at businesses selling goods that contribute to such harm. Therefore, the limitation that is placed on the right to a private life is directly related to improving the welfare of the recipient and any dependents.

Any limitation on a person's right to privacy is reasonable and proportionate given the objectives of these programs. There are also effective community safeguards over the extent of the restrictions imposed.

### The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided for in a number of the seven core international human rights treaties to which Australia is a party, most relevantly the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (the CERD). In particular, article 5 of the CERD requires parties 'to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law', notably in the enjoyment of 'the right to...social security and social services' (article 5(e)(iv)).

Discrimination is impermissible differential treatment among persons or groups that results in a person or a group being treated less favourably than others, based on a prohibited ground for discrimination, such as race. However, the UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute

discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant’.

The rights to equality and non-discrimination are not directly limited by the Cashless Debit Card or Income Management. These programs are not applied on the basis of race or cultural factors. Locations for these program have been chosen based on objective criteria. This includes high levels of welfare dependence and community harm, as well as the outcomes of comprehensive community consultation.

Anyone residing in locations where the Cashless Debit Card trial operates, receiving a payment and being of a certain age as specified by instrument or legislation, will become a Cashless Debit Card trial participant. The Cashless Debit Card trial is therefore not targeted at people of a particular race, but to welfare recipients who meet particular criteria.

### 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 and Income Management, people are able to spend their restricted funds on any goods or services except alcohol, gambling and illicit drugs because 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.

The extension of the Cashless Debit Card trial in existing sites and Income Management in the Cape York region will not impact on or interfere with a person’s right to freely pursue their economic, social or cultural development.

### 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.

Therefore, measures used to restrict payment spent on alcohol, drugs and gambling can be used to 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 instrument is compatible with human rights. It advances the protection of human rights by ensuring that welfare payments are spent in the best interests of welfare recipients and their dependents by restricting spending on alcohol, drugs and gambling.

To the extent that this instrument may limit human rights those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation and 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.

**Senator the Hon Anne Ruston, Minister for Families and Social Services**