

## **EXPLANATORY STATEMENT**

### *Social Security (Administration) Act 1999 Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2020*

#### **Purpose**

The purpose of the *Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2020* (this instrument) is to determine that the Northern Territory is a 'declared voluntary income management area' for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (the Act).

This instrument repeals and replaces the *Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2010* (the 2010 instrument) which would sunset on 1 October 2020 unless repealed earlier.

#### **Background**

Part 3B of the Act establishes income management measures that apply to recipients of certain welfare payments. Income management supports income support recipients with budgeting assistance and ensures they, and their families and children, have access to essentials such as food, housing, electricity and education.

If a person is subject to income management under Part 3B, the Secretary will deduct amounts from the person's relevant welfare payments and credit those amounts to the person's income management account.

The Secretary may debit amounts from the person's income management account, in accordance with Part 3B, for the purpose of taking actions directed to meeting the priority needs, such as food, clothing and shelter, of the person and his or her dependants.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to income management. Section 123UFA, in that Subdivision, provides that a person is subject to income management at a particular time if a voluntary income management agreement is in force in relation to the person.

The term 'voluntary income management agreement' is defined in section 123TC of the Act as an agreement under section 123UM of the Act. Section 123UM provides that the Secretary can only enter into a voluntary income management agreement with a person if, among other things, the person's usual place of residence is within a declared voluntary income management area.

The term 'declared voluntary income management area' has the meaning given by section 123TGA of the Act. Section 123TGA provides that the Minister may, by legislative instrument, determine that a specified State, Territory or area is a declared voluntary income management area for the purposes of Part 3B of the Act.

The effect of this instrument is that the Northern Territory is determined to be a 'declared voluntary income management area' for the purposes of Part 3B of the Act. Therefore, a person whose usual place of residence is within the Northern Territory may enter into a written agreement with the Secretary agreeing to be voluntarily subject to income management throughout the period when the agreement is in force.

### Repeal

This instrument repeals the 2010 instrument which would have otherwise sunset on 1 October 2020. This instrument is in substantially the same terms as, and will replace, the 2010 instrument on its repeal.

### Authority

This instrument is made under the authority of section 123TGA of the Act and determines that a specified State, Territory or area is a declared voluntary income management area for the purposes of Part 3B of the Act.

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 is 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.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

### **Commencement**

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

### **Consultation**

Consultation with Services Australia, the National Indigenous Australians Agency and the Northern Territory Government has determined that the 2010 instrument was operating effectively and that there was no need for a change in policy.

In late 2019 and early 2020, the Department of Social Services engaged with communities and stakeholders in the Northern Territory on the proposed transition from income management to the Cashless Debit Card. This included 74 community visits and 92 meetings with stakeholders and local organisations.

As part of this engagement, the department discussed current income management policy settings with community members and stakeholders.

### **Regulation Impact Statement**

This instrument does not require a Regulation Impact Statement (OBPR Reference ID: 42974).

## **Explanation of the provisions**

**Section 1** provides that the name of this instrument is the *Social Security (Administration) (Declared voluntary income management area – Northern Territory) 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 section 123TGA of the Act.

**Section 4** contains definitions of certain terms used in this instrument.

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

**Section 5** provides that Schedule 1 repeals the *Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2010*.

**Section 6** determines, for section 123TGA of the Act, that the Northern Territory is a declared voluntary income management area.

### **Schedule 1 – Repeals**

**Section 1** repeals the *Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2010*.

**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*

*Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2020*

The *Social Security (Administration) (Declared voluntary income management area – Northern Territory) 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 instrument is made under section 123TGA of the *Social Security (Administration) Act 1999* (the Act) and replaces the previous *Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2010*, which would sunset on 1 October 2020.

Section 123TGA of the Act provides that the Minister may, by legislative instrument, determine that a specified State, Territory or area is a declared voluntary income management area for the purposes of Part 3B of the Act.

Once an area is determined to be a ‘declared voluntary income management area’ for the purposes of Part 3B of the Act, a person whose usual place of residence is within that area may enter into a written agreement with the Secretary agreeing to be voluntarily subject to income management throughout the period when the agreement is in force.

The Secretary may then debit amounts from the person’s income management account, in accordance with Part 3B of the Act, for the purpose of taking actions directed to meeting the priority needs, such as food, clothing and shelter, of the person and his or her dependants.

The effect of this instrument is that the Northern Territory continues to be an area in which people in receipt of certain income support payments can volunteer to participate in income management.

### **Human rights implications**

Income management impacts on a number of human rights including the rights of children and the right to:

- self-determination;
- social security; and
- an adequate standard of living.

Income management is a budgeting tool to help people meet ongoing needs for themselves and their family. Income management works by directing a proportion of certain income support and family assistance payments to priority items such as food, housing, clothing and utilities. Income managed funds cannot be spent on alcohol, tobacco, pornography or gambling.

Income management can be voluntary or compulsory. This instrument relates to people who receive a relevant income support payment and choose to participate in voluntary income management. A person who chooses to volunteer for income management must participate for at least 13 weeks. After that, they can cease income management at any time.

This Instrument declares the Northern Territory as a 'declared voluntary income management area', allowing people who are residents of the Northern Territory to enter into an agreement with the Secretary to be voluntarily subject to income management throughout the term of the agreement.

This instrument does not reduce a person's right to self-determination or limit a person's social security entitlement under article 1 and 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Participation in voluntary income management is predicated on a person self-identifying that they would benefit from having a portion of their welfare payments set aside to pay for their priority needs. While this measure does limit a person's ability to freely dispose of all of their resources (as income managed funds can only be spent on priority items), it does not impact on their right to freely pursue their economic, social or cultural development. Income management does not change how much a person receives, it just changes the way that they receive a portion of their welfare payments.

This instrument advances the right to an adequate standard of living under Article 11(1) of the ICESCR by ensuring that money is available for priority goods such as food, clothing, education and housing, and provides resources to help people develop good budgeting practices. Income management can also help people stabilise their lives, so they can care for their children, and join or return to the workforce and ultimately end the cycle of welfare dependence.

A restriction of a portion of welfare payments for a person on the voluntary income management measure in the Northern Territory ensures that an adequate amount of a person's welfare payment is spent on meeting the priority needs of their children and other dependants. This instrument thereby advances the right of children to the highest attainable standard of health, to benefit from social security, to an adequate standard of living and to education (articles 24, 26, 27 and 28 of the *Convention on the Rights of the Child*).

## **Conclusion**

This instrument is compatible with human rights. It advances the protection of human rights by allowing certain income support recipients in the Northern Territory to volunteer for income management so they can continue to meet their priority needs and improve the standard of living for themselves and their dependants.

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