

EXPLANATORY STATEMENT

Social Security (Administration) Act 1999 Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2020

Purpose

The purpose of the *Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2020* (this instrument) is to determine that the Northern Territory is a ‘declared child protection State or Territory’ 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 child protection State or Territory – Northern Territory) Determination 2010* (the 2010 instrument) which would sunset on 1 October 2020 unless repealed earlier.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 of the Act sets out the various situations in which a person is subject to income management.

Section 123UC of the Act (in that Subdivision) provides that a person is subject to income management at a particular time (the test time) if, amongst other things: before the test time, a child protection officer of a State or Territory has given the Secretary a written notice requiring that the person be subject to income management; and, at the test time, the State or Territory is a declared child protection State or Territory.

The term ‘child protection officer’ is defined in section 123TC of the Act as an officer or employee of a State or Territory who has functions, powers or duties in relation to the care, protection or welfare of children.

Section 123TF of the Act provides that the Minister may, by legislative instrument, determine that a specified State or Territory is a declared child protection State or Territory for the purposes of Part 3B of the Act.

The effect of this instrument is that a child protection officer within the Northern Territory Government will be able to give the Secretary a notice, as mentioned in section 123UC of the Act, requiring a person to be subject to income management.

Repeal

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

Authority

This instrument is made under the authority of section 123TF of the Act and determines that a specified State or Territory is a declared child protection State or Territory 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

The Determination 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). The instrument will have minor regulatory impact on businesses, organisations, individuals or other Government agencies.

Explanation of the provisions

Section 1 provides that the name of this instrument is the *Social Security (Administration) (Declared child protection State or Territory – 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 123TF 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 child protection State or Territory – Northern Territory) Determination 2010*.

Section 6 specifies that for section 123TF of the Act, the Northern Territory is a declared child protection State or Territory.

Schedule 1 – Repeals

Section 1 repeals the *Social Security (Administration) (Declared child protection State or Territory – 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 child protection State or Territory – Northern Territory) Determination 2020

The *Social Security (Administration) (Declared child protection State or Territory – 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

This instrument is made under section 123TF of the *Social Security (Administration) Act 1999* (the Act) and replaces the previous *Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2010*, which would sunset on 1 October 2020.

Section 123TF of the Act provides that the Minister may, by legislative instrument, determine that a specified State or Territory is a declared child protection State or Territory for the purposes of Part 3B of the Act.

The effect of the instrument is that a child protection officer with the Northern Territory Government will be able to give the Secretary a notice, as mentioned in section 123UC of the Act, requiring a person to be subject to income management. This would occur where the child protection officer determines income management would be helpful to that person and would assist with their family's situation.

If a person meets the requirements of section 123UC, the Secretary may 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 their dependants.

Human rights implications

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

- social security;
- a private life; and
- equality and non-discrimination.

Child Protection Income Management is a tool for child protection authorities to help protect children who are experiencing neglect. Under this measure, child protection officers can make a referral for Services Australia to income manage a person. Such referrals generally apply for a particular period of time (3 to 12 months).

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'.

Income management does not change the amount of welfare payments a person receives; it just changes the way that they receive part of their welfare payments. People income managed under the child protection measure have 70 per cent of their income support and family assistance payments directed towards meeting their basic needs such as food, clothing, housing and utilities. Income managed funds cannot be spent on alcohol, tobacco, pornography or gambling. The remainder of welfare payments are paid in the usual way.

Any limitations on the right to social security is reasonable and proportionate and is directly related to the objective of ensuring that welfare payments are directed to the needs of children who are experiencing neglect.

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 this Instrument, a person can be referred to be income managed on the child protection measure within the Northern Territory. This would only occur in cases of child neglect where the child protection officer determines income management would be helpful to that person and would assist with their family's situation. Income management of the person would cease at the expiry of the referral period, which is also determined by the child protection officer.

While this instrument does limit a person's ability to freely dispose of all their resources (as income managed funds can only be spent on priority items), this is directly related to addressing identified cases of child neglect. This instrument will not impact on or interfere with a person's right to pursue freely their economic, social or cultural development.

The rights of children

By ensuring that a portion of income support payments is used to cover essential goods and services, income management can improve living conditions for the children of income support recipients.

Where a child protection officer in the Northern Territory provides the Secretary a written notice requiring that the person be subject to income management, this ensures that the person referred to be income managed has a portion of their welfare payments directed towards meeting the priority needs of their child, including healthcare and education. This measure thereby advances the right of children to the highest attainable standard of health, to benefit from social security, to adequate standards of living and to education (Articles 24, 26, 27 and 28 of the *Convention on the Rights of the Child*).

Referrals to income management would only be made where a child protection officer considers it would be helpful to that person and would assist with their family's situation. In these cases, income management may be helpful in ensuring neglect of a child does not worsen and lead to the child being removed from their family. As such, this measure advances the right of children to know and be cared for by their parents and ensures that the child shall not be separated from their parents against their will (Articles 7 and 9 of the *Convention on the Rights of the Child*).

Conclusion

The Instrument is compatible with human rights. It advances the protection of children by giving a child protection officer within the Northern Territory Government the power to give a notice to the Secretary requiring that the carer of a child be subject to income management. This ensures that a portion of the person's income support payments will be directed towards meeting the priority needs including the cost of living, healthcare and education expenses of their child and other dependents.

To the extent that human rights are limited, those limitations are reasonable, necessary and proportionate to achieving the objectives of income management.

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