

## **EXPLANATORY STATEMENT**

### *Social Security (Administration) Act 1999*

#### *Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determination 2022*

### **Purpose**

The purpose of the Determination is to replace the *Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determination 2011* (2011 Determination), which is due to sunset on 1 April 2022. The effect of the *Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determination 2022* (Determination) is to ensure the same declared voluntary income management areas that are specified in the 2011 Determination continue to be declared voluntary income management areas, for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (Act).

This means that a person whose usual place of residence is within a declared voluntary income management area may enter into a written agreement with the Secretary under which the person agrees to be voluntarily subject to the income management regime.

### **Background**

Part 3B of the Act establishes an income management regime that applies to recipients of certain welfare payments. If a person is subject to the income management regime 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 then 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 of the person or his or her dependants.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to the income management regime. This measure allows the Secretary and a person to enter into an agreement under which the person voluntarily agrees to be subject to the income management regime under Part 3B of the Act, throughout the period when the agreement is in force. Section 123UFA provides that a person is subject to the income management regime at a particular time if a voluntary income management agreement is in force in relation to the person. A '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.

### **Information sharing**

Information about a person that is collected by an officer in relation to the income management regime will have the character of protected information where information is being obtained for the purposes of the social security law. This includes information about voluntary participants.

Division 7 of Part 3B of the Act allows for the disclosure of information in relation to persons subject to the income management regime in limited circumstances.

Apart from these specific provisions, the Act has further protections in place that limit the way in which protected information is handled. Under Division 3 of Part 5 of the Act, a person will be authorised to record, disclose or use protected information, for example, where this is for the purposes of the social security law or family assistance law, with consent or in accordance with a public interest certificate. If the recording, disclosure or use of protected information is not authorised under the Act and the person knows or ought reasonably to know that the information is protected information, the person may commit an offence which is punishable on conviction by imprisonment for a term not exceeding two years.

### **Availability of independent review**

Under subsection 23(17) of the *Social Security Act 1991*, legislative instruments made under the Act form part of the social security law. Accordingly, decisions made under this Determination are subject to internal and external merits review under Parts 4 and 4A of the Act (unless specified as a decision that is not reviewable under sections 127 and 144 of the Act).

### **Commencement**

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

### **Disallowable instrument**

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

### **Consultation**

In making this Determination, the Department of Social Services consulted with Services Australia, as the service delivery agency for the income management regime. This consultation determined that the 2011 Determination, including the declared voluntary income management areas in Western Australia, has been operating effectively and in line with the original policy intent.

The Department of Social Services also consulted with the Western Australian Department of Communities and the Jacaranda Community Centre, as important stakeholders in the community.

### **Regulation Impact Statement**

The Determination does not require a Regulation Impact Statement. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID 44668).

## **Explanation of the provisions**

### Section 1

This section provides that the name of this Determination is the *Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determination 2022*.

### Section 2

This section provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

### Section 3

This section provides that the authority for making the Determination is paragraph 123TGA(c) 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 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. In making the Determination, the Secretary is relying upon this subsection in conjunction with the instrument-making power in paragraph 123TGA(c) of the Act.

### Section 4

This section provides that in this Determination, the term 'Act' is defined as the *Social Security (Administration) Act 1999*.

### Section 5

This section provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned.

### Section 6

This section provides that for the purposes of Part 3B of the Act, the declared voluntary income management areas are each of the areas specified in Schedule 1 to this Determination. These areas are defined by their Western Australian postcode, which has been allocated by Australia Post in respect of that area.

## **Schedule 1 – Declared voluntary income management areas**

Schedule 1 specifies the declared voluntary income management areas. These are divided into different parts by region in Western Australia. There are ten parts as follows:

Part 1 – Cannington and surrounding areas

Part 2 – Joondalup and surrounding areas

Part 3 – Midland and surrounding areas

Part 4 – Mirrabooka and surrounding areas

Part 5 – Armadale and surrounding areas

Part 6 – Fremantle and surrounding areas

Part 7 – Rockingham and surrounding areas

Part 8 – Perth and surrounding areas

Part 9 – Kimberley and surrounding areas

Part 10 – Peel and surrounding areas

Each of these parts specify the postcodes that are declared voluntary income management areas for the purposes of Part 3B of the Act. These are the same postcodes that were specified in the 2011 Determination.

## **Schedule 2 – Repeals**

Schedule 2 specifies that the whole of the 2011 Determination is repealed.

The 2011 Determination is due to sunset on 1 April 2022, and this Determination replaces the 2011 Determination in substantially the same terms.

## **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 areas – Western Australia) Determination 2022***

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**

The *Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determination 2022* (Determination) is made under paragraph 123TGA(c) of the *Social Security Act (Administration) Act 1999* (Act). This provides that the Minister may, by legislative instrument, determine that a specified area is a declared voluntary income management area for the purposes of the income management regime in Part 3B of the Act. This means that a person whose usual place of residence is within a declared voluntary income management area may enter into a written agreement with the Secretary under which the person agrees to be voluntarily subject to the income management regime.

The Determination repeals and replaces the *Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determination 2011* (2011 Determination), which is due to sunset on 1 April 2022. The Determination ensures that the same declared voluntary income management areas that are specified in the 2011 Determination continue to be declared voluntary income management areas, for the purposes of Part 3B of the Act. These areas are all in Western Australia, and are identified in the Determination by their postcode.

#### **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 welfare 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. The Determination relates to people who receive a relevant welfare 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.

The Determination declares specified areas in Western Australia as declared voluntary income management areas. This allows people who are residents of those areas to enter into an agreement with the Secretary to be voluntarily subject to income management throughout the term of the agreement.

Voluntary income management is an optional program available to welfare payment recipients in the designated areas. 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) with their consent, it does not impact on their rights to the extent that it supports the enjoyment of these rights, particularly:

- the right to social security under article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). Income management does not change how much a person receives, it just changes the way that they receive a portion of their welfare payments. Participation in voluntary income management ensures a person spends 50 percent of their welfare payment to meet their priority needs, which allows them to enjoy 'essential health care, basic shelter and housing, water sanitation, foodstuffs and the most basic forms of education' as provided under article 9.
- the right to freely determine their economic development under article 1 of the ICESCR. In assisting people to meet their priority needs, voluntary income management provides people with more financial stability, so they can better pursue their economic, social and cultural development.
- the right to an adequate standard of living under Article 11.1 ICESCR. Voluntary income management assists a person in allocating funds towards life's essentials, such as food, rent and medical necessities which are essential to an adequate standard of living. Income management provides resources to help people develop good budgeting practices, and 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.

The Determination also 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*). This is because income management ensures that an adequate amount of a person's welfare payment is spent on meeting the priority needs of their children and other dependants.

## **Conclusion**

The Determination is compatible with human rights. It advances the protection of human rights by allowing certain welfare payment recipients in Western Australia 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**