

Social Security (Administration) (Declinable Transactions and BasicsCard Bank Account) Determination 2023

EXPLANATORY STATEMENT

Issued by the authority of the Secretary, Department of Social Services

Social Security (Administration) Act 1999

Purpose

The Social Security (Administration) (Declinable Transactions and BasicsCard Bank Account) Determination 2022 (the Determination) is made for the purpose of Part 3AA of the *Social Security (Administration) Act 1999* (the Act).

The Government is delivering on its commitment to reform Income Management (IM) through the introduction of the SmartCard, which is a contemporary Visa debit card linked to a bank account maintained by a person for receipt of payments under the enhanced income management regime. By using their SmartCard, individuals can access a modern banking experience and will receive customer support delivered by Services Australia and related with all customer facing interactions and support delivered by Services Australia.

In this Determination, the Secretary of the Department of Social Services has determined for the purposes of the enhanced income management regime in Part 3AA of the Act:

- the kind of bank account to be maintained by a person who is subject to the enhanced income management regime for the receipt of payments under Part 3AA of the Act (subsection 123SU(1))
- the terms and conditions relating to the establishment, ongoing maintenance and closure of a specified bank account (subsection 123SU(2))
- the kind of businesses in relation to which transactions involving money in a relevant bank account may be declined by a financial institution (subsection 123SV(2)).

The Determination also repeals the *Social Security (Administration) (Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019* (the 2019 Determination). This reflects the repeal of Part 3D of the Act by the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* (the CDC Repeal Act). Part 3D of the Act established cashless welfare arrangements (also known as the Cashless Debit Card or CDC program).

The SmartCard ensures enhanced IM participants have access to contemporary technology underpinned by the BasicsCard bank account.

Background

The enhanced income management regime forms an essential part of the government's election commitment to reform income management and abolish the CDC program. The purpose of the enhanced income management regime is to ensure that welfare payments are not spent on products and services that contribute to social harm and, in conjunction with a services support program, to provide budgeting support for participants.

Individuals subject to the enhanced income management regime will receive a portion of their welfare payments in an account that is linked to a SmartCard. This is a bank account established with Indue or Traditional Credit Union. Amounts deposited into this account can be accessed by a debit card, known as the SmartCard.

The SmartCard does not allow cash withdrawals, and cannot be used to purchase excluded goods, excluded services or cash-like products (such as gift cards) that could be used to obtain those goods and services. This ensures that individuals subject to the enhanced income management regime have sufficient money available to pay for everyday human needs such as bills, food, and housing.

Using the SmartCard, purchases can be made at over one million terminal locations around Australia compared to the more limited technology utilised by the income management scheme in Part 3B of the Act.

Commencement

Sections 1 to 8 and Schedules 1 to 4 to the Determination will commence on the day after the Determination is registered on the Federal Register of Legislation.

Schedule 5 to the Determination will commence immediately after the commencement of Part 2 of Schedule 1 of the CDC Repeal Act. This ensures the 2019 Determination is not repealed before the cashless welfare arrangements in Part 3D of the Act cease.

Disallowable instrument

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*, and is subject to disallowance by either House of Parliament.

Interaction with protections in the social security law

As the Determination contains no decision-making powers, the internal and external review provisions in the social security law will not be triggered by any of the declared matters or by the terms and conditions of the SmartCard and associated bank account.

Information collected by an 'officer' in relation to a person who is subject to the enhanced income management regime will be 'protected information' where it is obtained for the purposes of the social security law. This will ensure that each person's information is obtained, recorded, used and disclosed consistently with the confidentiality provisions in Division 3 of Part 5 of the Act. These provisions have extensive operation and apply to Commonwealth service providers, including financial institutions.

In addition, Division 4 of Part 3AA of the Act facilitates disclosure of information by a financial institution to the Secretary in relation to persons subject to the enhanced income management regime (see section 123SS). This means that the Secretary and financial institutions can discuss issues affecting a person's SmartCard and associated bank account to ensure that welfare recipients have ready and continuous access to their finances, particularly in cases of emergencies.

Consultation

Extensive consultation has been undertaken with affected communities in relation to abolishing the CDC program and reforming income management. This included the introduction and passage of the CDC Repeal Act, which gave effect to the Government's election commitments following a detailed enquiry by the Senate Standing Committee on Community Affairs.

Submissions to the enquiry highlighted the need for a measured approach to the transition away from mandatory cashless welfare arrangements and income management, including the desire for an ongoing voluntary mechanism that encourages self-determination and increased community decision making. Submitters also identified the need for the future of income management programs to be supported by technology that is fit for purpose, and that any return to income management with the BasicsCard would be a backward step.

The implementation of enhanced income management takes an initial step to introduce enhanced technology for individuals who were previously participants in the CDC program so that they can enjoy a continuous modern banking experience while Government continues to consult on the future of income management.

The matters in this Determination primarily relate to the creation and maintenance of accounts and the treatment of qualified funds by financial institutions for the purpose of delivering enhanced income management. As such, additional consultation has also occurred with Services Australia, Indue Ltd and the Traditional Credit Union as the key stakeholders affected by implementation of the Determination.

Consultation will be ongoing with stakeholders, merchants, community members and affected individuals as the future of income management is refined by the Government.

Regulation Impact Statement (RIS)

A Regulation Impact Statement (RIS) was prepared and is titled *Reforming the Cashless Debit Card and Income Management*. The RIS is available on the website of the Department of the Prime Minister and Cabinet at <https://oia.pmc.gov.au/published-impact-analyses-and-reports/abolish-cashless-debit-card>. The executive summary from the RIS is included at the end of this explanatory statement.

Explanation of the provisions

Part 1—Preliminary

Section 1 provides that the name of the Determination is the *Social Security (Administration) (Declinable Transactions and BasicsCard Bank Account) Determination 2023*.

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislation, except for Schedule 5 which commences immediately after Part 3D of the Act is repealed.

Section 3 provides that the authority for making the Determination is subsections 123SU(1), 123SU(2) and 123SV(2) of the Act.

Section 4 outlines definitions for the purpose of the Determination. The note points to definitions in the Act.

In this instrument:

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

BasicsCard bank account means a bank account of the kind referred to in section 7 of this instrument.

Indue 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 as 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 as in force at the commencement of this instrument.

Traditional Credit Union means Traditional Credit Union Limited (ABN 50 087 650 922).

Section 5 provides that each instrument specified in a Schedule to the Determination is amended or repealed as set out in the applicable items.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make a legislative instrument '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 this Determination, the Secretary is

relying upon this subsection in conjunction with the instrument-making powers in subsections 123SU(1), 123SU(2) and 123SV(2) of the Act.

Part 2—Declinable Transactions

Section 6 provides that for the purposes of subsection 123SV(2) of the Act, the kinds of businesses specified in Schedule 1, Schedule 2 or Schedule 3 to the Determination are the kinds of businesses in relation to which transactions involving money in a BasicsCard 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*.

Part 3—BasicsCard Bank Account

Section 7 provides that the kind of bank account to be maintained by a person who is subject to the enhanced income management regime, for the receipt of payments, is a bank account established with Indue or Traditional Credit Union.

Indue and Traditional Credit Union provide financial payment products and settlement services, and have been engaged by the Commonwealth to provide the SmartCard and associated bank accounts for the purpose of the enhanced income management regime.

Section 8 provides that the terms and conditions of a BasicsCard bank account include the terms and conditions set out in Schedule 4 to the Determination.

Schedules

Schedule 1, Schedule 2 and Schedule 3 set out, for the purposes of section 6 of the Determination, the kinds of businesses in relation to which transactions involving qualified funds may be declined by a financial institution. These kinds of businesses are defined in 3 distinct ways, set out in 3 separate schedules, to ensure that there is scope for a business to decline the purchase of excluded goods and excluded services even if it is operating or trading under a different merchant category code or industry code than its primary service.

Schedule 1 declares the relevant kinds of businesses by description. These are:

- businesses that sell excluded goods or excluded services (being alcoholic beverages, tobacco products, pornographic material, or gambling services) or cash-like products that could be used to obtain those goods and services (table item 1);
- businesses from which purchases may be made through online transactions or without the need to present a card and the transaction involving qualified funds is proposed to be made without presenting a SmartCard (table item 2);
- businesses which there are reasonable grounds for believing engage or have engaged in transactions with a person subject to the enhanced income management regime that facilitate, or are designed to facilitate, access by the person to cash or cash-like products (table item 3); and
- businesses that would, if they were operating their business under the correct Merchant Category code or Australian and New Zealand Standard Industrial

Classification code, be a kind of business to which Schedule 2 or 3 of the Determination would apply (table item 4).

Schedule 2 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>. The relevant Merchant Category codes are applied, by reference, consistently with subsection 123SV(2) of the Act and paragraph 14(1)(b) of the *Legislation Act 2003*, as in force at the commencement of the Determination.

Schedule 3 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 the [Australian and New Zealand Standard Industrial Classification \(ANZSIC\), 2006 \(Revision 2.0\) | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-and-new-zealand-standard-industrial-classification-anzsic-2006-revision-2.0). The relevant ANZSIC codes are applied, by reference, consistently with subsection 123SV(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 sets out, for the purposes of section 8 of the Determination, terms and conditions relating to the establishment, ongoing maintenance and closure of a SmartCard and associated bank account. Schedule 4 does not prevent Indue and Traditional Credit Union from applying other terms and conditions if they are negotiated as part of the contact with the Commonwealth and are not inconsistent with the terms and conditions set out in the Determination.

The purpose of Schedule 4 is to set out the terms and conditions that are specific to a SmartCard and associated bank account. Individuals subject to the enhanced income management regime should obtain the full set of terms and conditions for their SmartCard and associated bank account from Indue or Traditional Credit Union.

The terms and conditions set out in Schedule 4 include:

1. Single name: the BasicsCard bank account can only be opened in a single name and operated by the sole holder of the account or their Part 3B payment nominee. This means that it will not be possible for the account to be opened in joint names, and no-one other than the holder or their Part 3B payment nominee will be able to operate the account.
2. Debit card provided: a debit card will be provided to the holder of a BasicsCard bank account. This debit card has modern functionality and is the key difference between the income management regime under Part 3B of the Act and the enhanced income management regime under Part 3AA of the Act.
3. Depositing money: any amount of money can be deposited into a BasicsCard bank account. This term makes it clear that a person subject

to the enhanced income management regime or another person can deposit additional money into a BasicsCard bank account.

4. Transferring money: subject to item 13 (which states that limitations may be placed on the amounts a particular holder of a BasicsCard bank account can transfer out of his or her BasicsCard bank account), a person may transfer money from one BasicsCard bank account to another BasicsCard bank account.
5. Purchasing goods or services over the telephone or internet: the debit card attached to the BasicsCard bank account may be used to purchase goods or services over the telephone or internet, or without presenting the debit card. However, excluded goods, excluded services, or cash-like products (that could be used to obtain excluded goods or excluded services) cannot be purchased using the BasicsCard bank account debit card, including over the telephone or internet. Purchase of excluded goods and excluded services is blocked on the debit card attached to a BasicsCard by technological solutions at the merchant and industry level. The types of merchants and industries that have these solutions in place are further defined in Schedules 2 and 3.
6. Automatic drawing or withdrawal of monies by a third party: a BasicsCard 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 (for example a mortgage). This is subject to item 11, which provides that systems are in place to prevent a person transferring money out of their BasicsCard bank account for enabling the person to access cash or obtain cash-like products, excluded goods or excluded services.
7. No fees: Indue or Traditional Credit Union will not charge fees for depositing money into a BasicsCard bank account, or providing a debit card attached to a BasicsCard bank account to a person subject to the enhanced income management regime.
8. No interest: Indue or Traditional Credit Union will not charge interest on a balance in a BasicsCard bank account that is less than zero. Generally, a BasicsCard bank account cannot be overdrawn although there may be exceptional circumstances that result in a participant's BasicsCard bank account having a negative balance. In these circumstances, Indue and Traditional Credit Union cannot charge fees.
9. No withdrawal of cash: cash cannot be withdrawn from a BasicsCard bank account, whether through the use of a debit card attached to the account or by other methods of withdrawal.
10. Systems in place to prevent purchase of excluded goods or excluded services: systems are in place which, so far as possible, prevent money in a BasicsCard bank account, and a debit card attached to that account, being used to purchase excluded goods, excluded services or cash-like products that could be used to purchase such goods and services. The

systems include technological solutions, which block purchases expenditure at the merchant level. The types of businesses where this would apply are those as defined in Schedule 1, 2 and 3.

11. Systems in place to prevent transferring of money: technological systems are in place which, so far as possible, prevent a person subject to the enhanced income management regime transferring money from a BasicsCard bank account to another bank account that is not a BasicsCard bank account. An exception to this term applies if money is transferred for a purpose other than enabling the person to access cash, cash-like products, excluded goods or excluded services.
12. Limitations on spending of amounts: limitations may be placed on the amount a person subject to the enhanced income management regime can spend on any given day using a debit card attached to a BasicsCard bank account. The limitations are set out in the BasicsCard bank account terms and conditions provided by the relevant financial institution and can be varied upon request by an individual after assessment by Services Australia.
13. Limitations on transfer of amounts: limitations may also be placed on the amounts a holder of a BasicsCard bank account can transfer out of their account. These limitations are variable and are set out in the BasicsCard bank account terms and conditions provided by the relevant financial institution. Variations to the limit can be made upon request by an individual.
14. Limitations to prevent money being used to purchase excluded goods or services: limitations may be placed on a BasicsCard bank account, or a debit card attached to that account, to prevent money in the bank account being used to purchase excluded goods, excluded services or cash-like products that could be used to obtain such goods or services.
15. Closure of account: a BasicsCard bank account provided to a person subject to the enhanced income management regime may be closed without the consent of the person if:
 - (a) the holder of the account ceases to be subject to the enhanced income management regime;
 - (b) the holder of the account has died; or
 - (c) the person has given notice to the Secretary that they would like to have their BasicsCard bank account (first account) administered by another financial institution (second account), and:
 - (i) the second account has been established; and
 - (ii) the first account has a nil balance.
16. Closure of account and transfer of funds where person has ceased to be subject to the enhanced income management regime: if a person has ceased to be subject to the enhanced income management regime, the

BasicsCard bank account and associated debit card are no longer required. A person will receive information that their account is being closed when they are notified in writing that they are no longer subject to the enhanced income management regime. The financial institution administering the person's account may:

- (a) if it has a nil balance, close the account within 91 days of the person ceasing to be subject to the enhanced income management regime; or
 - (b) transfer any remaining funds into a bank account nominated by the person within 91 days of the person ceasing to be subject to the enhanced income management regime before closing the account.
17. Transfer of funds person is deceased: where a BasicsCard bank account was held by a person who has died, the financial institution administering that account may:
- (a) close the account within 91 days of the person deceasing if it has a nil balance; or
 - (b) transfer any remaining funds into a bank account previously nominated by the person, provided that account is held in the sole name of the person who has died, within 91 days of the person deceasing. This ensures any remaining funds continue to be part of the deceased person's estate.

State and territory laws regarding the management of deceased estates and the *Banking Act 1959* may apply to funds retained in a BasicsCard bank account after a person ceases to be subject to the enhanced income management regime. For example, state or territory laws of intestacy will apply if the person dies intestate, If the only account nominated to the Secretary is a joint account with another person, this will be dealt with either under the person's Will or using intestacy laws as the joint account would not form part of the deceased person's estate, based on the principle of survivorship. In limited circumstances (for example, where there is no known or lawful claimant), unclaimed monies may be dealt with in accordance with the Banking Act.

18. Transfer of funds where person changes financial institutions: a financial institution may transfer funds from a BasicsCard bank account held by a person subject to the enhanced income management regime (first account) to a BasicsCard bank account maintained by another financial institution (second account) if the account holder gives the Secretary a notice requesting to have their bank account administered by a different financial institution, provided the first account has funds available and the second account has been established.

Schedule 5 repeals the Social Security (Administration) (Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019, which was made under section 124PP of the Act for the purposes of the cashless welfare arrangements established by Part 3D of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make a legislative instrument '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'.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Declinable Transactions and BasicsCard Bank Account) Determination 2023

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 Secretary of the Department of Social Services for the purposes of Part 3AA of the *Social Security (Administration) Act 1999* (the Act), which relates to the enhanced income management regime. The Determination is made under subsections 123SU(1), 123SU(2) and 123SV(2) of the Act.

Division 3 of Part 3AA sets out limitations on the use of the qualified portion of a person's eligible welfare payment, namely, that this portion of the payment cannot be used to purchase alcoholic beverages, gambling service, tobacco products, pornographic material, or cash-like products that could be used to those goods or services. The Determination supports arrangements for the enhanced income management regime by providing clarification and detail about how these limitations will be implemented. This Determination is also intended to ensure the newly established enhanced income management regime can operate, providing eligible individuals with superior technology to the existing income management regime in Part 3B of the Act.

Subsection 123SU(1) sets out that the Secretary may determine, by legislative instrument, a kind of bank account, for the receipt of payments under Part 3AA of the Act, to be maintained by a person who is subject to the enhanced income management regime. The Determination provides that the kind of account is an account held with Indue or Traditional Credit Union.

In accordance with subsection 123SU(2), the legislative instrument made under subsection 123SU(1) may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account so determined. This Determination prescribes terms and conditions relating to a SmartCard and associated bank account.

Subsection 123SV(1) provides that the Secretary may, by legislative instrument, declare the kinds of businesses in relation to which transactions involving qualified funds may be declined by a financial institution. This Determination declares the kinds of business in relation to which transactions may be declined by a financial institution by description, merchant category codes, and Australian and New Zealand Standard Industrial Classification (ANZSIC) codes.

Human rights implications

This Determination engages the following rights:

- the rights of equality and non-discrimination
- the right to self-determination
- the right to an adequate standard of living, including food, water and housing
- the right to social security
- the right to a private life.

The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided for in a number of the 7 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).

The Determination does not directly limit the rights of equality and non-discrimination. All participants in the enhanced income management regime will be subject to the same restrictions, and eligibility criteria are not based on race, gender or cultural characteristics.

Although the Determination does not directly engage the rights to equality and non-discrimination, it may indirectly engage these rights due to a large number of First Nations people participating in the enhanced income management regime. However, the enhanced income management regime has been developed as a result of extensive consultation with First Nations communities and is intended to address and curtail harm, antisocial behaviour and entrenched disadvantage. Any impact on the right to equality and non-discrimination is considered to be reasonable and proportionate.

The right to self-determination

The right to self-determination is at a base level, the entitlement for an individual or a group of persons, to have autonomy and control over their destiny and to be treated respectfully. Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that all people have the right of self-determination, which includes the right to *'freely pursue their economic, social and cultural development'*.

Placing a limitation on a person's ability to access excluded goods and excluded services ensures that vulnerable people are protected from the harm that can result from overuse of, or dependence on, these goods and services. These limitations do not impact on or interfere with a person's right to pursue freely their economic, social or cultural development.

Individuals who are eligible for enhanced income management can comfortably access priority needs while also having access to a portion of their welfare payment to spend where and how they choose. Although there may be some limitation on the

right to self-determination, this limitation is minimal and is considered to be reasonable, necessary and appropriate to reduce the adverse behaviours and social harm present within communities.

The right to an adequate standard of living, including food, water and housing

Article 11(1) of the ICESCR details that all people have the right to an *'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'*.

The enhanced income management regime does not limit a person's right to an adequate standard of living. As noted above, the enhanced income management regime ensures that individuals are able to meet their priority needs such as food, bills and housing, while retaining a portion of their welfare payment to spend as they choose. The regime restricts access to harmful goods and services such as alcohol, tobacco, pornography, and gambling. It does not restrict access to essential goods and services required to maintain an adequate standard of living, and provides individuals with discretionary cash that will ensure a person can still participate in a cash economy if needed or required. This allows cash to be used for incidentals in a situation where access to electronic banking or bankcard systems are not available or convenient.

The right to social security

Article 9 of the ICESCR details all people have access *'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, with maximum available resources, to ensure *'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'*.

For those people subject to enhanced income management, the right to social security is only limited in the context of a person's ability to use a proportion of their payment to purchase excluded goods or excluded services. The enhanced income management regime does not alter a person's eligibility to receive welfare, nor does it reduce or alter the amount of a person's social security entitlement. Rather, it places limitations on how a portion of the person's welfare payment can be spent and provides a mechanism to ensure that a welfare payment recipient cannot spend their entire payment to purchase alcohol, tobacco, pornography, gambling services or a cash-like products that could be used to purchase these goods and services.

Under enhanced income management, a portion of the social security payment is paid to a participant as a qualified portion from which excluded goods and excluded services cannot be purchased. Businesses that offer excluded goods or excluded services can still be used by people utilising enhanced income management if the merchant has systems to prevent the sale of excluded products or excluded services to holders of an enhanced BasicsCard. These limitations are necessary as otherwise the objectives and overarching purposes of enhanced income management regime could not be accomplished.

In most respects, a SmartCard and associated bank account operates like a regular bank account. Once a SmartCard and associated bank account has been opened, a debit card is issued which will operate like a standard debit card that can be utilised at the majority of merchants who accept EFTPOS. Individuals participating in the enhanced income management regime will also be able to access a range of mainstream banking functions including 'tap and go' payments, online shopping, BPAY bill payments, further limiting any restriction on the person's right to social security.

Given the objectives of the enhanced income management regime, and that many people have been previously subject to the income management regime and will require support to manage their welfare payments into the future, any engagement with the right to social security is reasonable and appropriate.

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.

By restricting a person's ability to purchase excluded goods and excluded services, the enhanced income management regime could impact on a person's right to a private life. Given the objectives of the regime are to minimise access to goods and services that contribute to social harm and adverse behaviour, any limitation on a person's right to a private life is considered to be reasonable and appropriate.

The enhanced income management regime may also engage the right to privacy. Section 123SS of the Act allows the disclosure of information to the Secretary by a financial institution. In addition to strict confidentiality requirements in the Act, the Secretary and the financial institution must act in accordance with the *Privacy Act 1988*, including the Australian Privacy Principles (APPs). The APPs establish rules for how personal information can be used and disclosed. As a result, there are safeguards in place to protect an individual's privacy. Any ongoing limitation on a person's right to privacy is therefore reasonable and proportionate to ensure the objectives of the enhanced income management regime can be achieved.

Conclusion

The Determination is compatible with human rights. The Determination protects human rights by continuing to ensure that income support payments are spent in the best interests of welfare payment recipients and their family and children while ensuring eligible individuals have access to a contemporary card with similar functionality to a regular debit card (the SmartCard).

To the extent that they may limit human rights by enabling restrictions to be placed on how an individual uses their welfare payments, those limitations are reasonable, necessary and proportionate to achieving the legitimate objectives of the enhanced income management regime.

Raymond Griggs AO CSC, Secretary of the Department of Social Services

Regulation Impact Statement Executive Summary

Currently, there are 2 programs in operation that restrict what people can purchase with their welfare payments. These programs are IM which was established in 2007 and the CDC program which was established in 2016. These programs run concurrently across several locations in Australia. Both CDC and IM have an objective to restrict the purchase of items such as alcohol and gambling products so participants prioritise expenditure on essential expenses such as rent, food and utilities.

Since the CDC program inception, the policy landscape has changed considerably in Australia. Frameworks established between the Commonwealth and the States and Territory governments have seen the development of new national and community level initiatives to address the effects of drug and alcohol misuse and reduce domestic, family and sexual violence. The Commonwealth and State governments have also entered into a National Partnership agreement with the Coalition of Peaks on Closing the Gap.

Both programs have undergone several evaluations to monitor and evaluate the programs' successes and shortfalls. These evaluations have established that the CDC program has produced mixed results. The recent audit report of the *Cashless Debit Card by the Australian National Audit Office (ANAO)* (published 2022) highlights a lack of available data to confirm that the CDC program is achieving its outcomes and little evidence to support the continuation of the program.

The Government made an election commitment to abolish the CDC program and consult with communities about alternative options to support individuals and communities including options for voluntary IM.

In supporting the Government's implementation of this commitment, the Department of Social Services (the Department) has considered 2 options regarding the future of welfare quarantining.

The first option, for purpose of comparison, maintains the status quo, and continues a CDC program that has not demonstrated an ability to achieve its policy outcomes and places a regulatory burden on participants, businesses and communities due to geographical location and places barriers in relation to undertaking simple financial transactions. The CDC program assumes all people in a particular geography, in receipt of working age income support payments, need restrictions on the types of goods and services that can be purchased with their money.

The **preferred option is Option 2** where the CDC program is abolished and reforms are made to IM to enable a greater level of community decision-making. Transitional arrangements including support services would assist those who choose to leave the programs. Option 2 complements the Government's strategic priority to give people on these programs more choice on how they spend their income support payments. It will also provide greater value for money given the lack of evidence that the programs are meeting their objectives.

Option 2 will see a reduction in the regulatory burden faced by individuals and businesses in affected locations and provide participants with greater freedom to

choose how and where to spend their money and how they manage their finances including decisions on who they bank with. These are freedoms afforded to most Australians and those on the program have limits placed on these choices. The **regulatory save** has been calculated at **\$21.5m over 10 years**.

The Department has undertaken consultation with those in affected locations including targeted Ministerial visits by the Minister for Social Services, the Hon Amanda Rishworth MP (the Minister) and the Assistant Minister for Social Services, the Hon Justine Elliot MP (the Assistant Minister). Senator the Hon Patrick Dodson, Senator the Hon Malarndirri McCarthy, and Ms Marion Scrymgour MP have also participated in consultations. This has included consulting with CDC participants and other local stakeholders about the cessation of the CDC program. Consultations captured a wide range of stakeholders and captured a diversity of perspectives, including CDC participants, senior First Nations leaders, Community Reference Groups, service providers, local police, health services and local councils. Engagement with communities will continue as part of the implementation of the reforms.

Consultations involved understanding what the impacts of the CDC program are and how these are impacting individuals and businesses in the affected regions. It also involves seeking their views on what a suitable process for people to transition off the CDC program needs to include and what supports the community feel are required. In addition, in preparation for stage 2 discussions were held regarding what IM could look like.

At all times, the focus of these consultations is to understand the CDC participants' experiences and possible impacts on them and their communities to inform implementation arrangements and understand individual and community support needs.

These early consultations have included key service agencies and First Nations leadership groups. Consistent with the CDC program's evaluations they have stated that the impact of the program has been variable. The preference is the importance of support services to participants and their communities. Further, they have been clear that if the CDC program is removed, these services must endure to support the community and they must be guided by local priorities and led by local leadership.

Transition will be a staged approach with any future evaluation focused on the experience of participants coming off the programs and effectiveness of support services. The Department will consult with affected communities to ensure that the evaluation methodology is fit for purpose. This may include co-designing an evaluation methodology with communities, and identifying measures the communities see as important. It is important to note this information along with any lessons learnt will help develop Government's future evidence based policy.