

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security (Administration) Act 1999

*Social Security (Administration) (Declared Income Management area —
Ngaanyatjarra Lands) Determination 2023*

Purpose

The *Social Security (Administration) (Declared Income Management area — Ngaanyatjarra Lands) Determination 2023* (**Determination**) ensures the continuing operation of voluntary Income Management arrangements and the vulnerable welfare payment recipient Income Management measure in Ngaanyatjarra Lands. The Determination also repeals the *Social Security (Administration) (Declared voluntary Income Management areas—Ngaanyatjarra Lands and Laverton) Determination 2013* (**2013 Determination**), to remove Laverton shire as a declared voluntary Income Management area and specified vulnerable Income Management area for the purposes of paragraphs 123TGA(c) and 123UCA(1)(b) of the *Social Security (Administration) Act 1999* (**the Act**) respectively.

For the purposes of the Determination and this explanatory statement, Ngaanyatjarra Lands means the shire of Ngaanyatjarraku in Western Australia and the remote community known as Kiwirrkurra Community located within the shire of East Pilbara in Western Australia, as designated in accordance with the *Local Government Act 1995* (WA). Laverton shire refers to the shire of Laverton in Western Australia as designated in accordance with the *Local Government Act 1995* (WA).

Background

Part 3B of the Act establishes an Income Management regime for recipients of certain welfare payments. Under the Income Management regime, the Secretary will deduct amounts from the person's welfare payments and credit these amounts to the person's Income Management account. The Secretary may then debit these amounts from the person's Income Management account for the purposes of taking action directed to meeting the priority needs of the person and their children, partner and other dependants. These priority needs include food, clothing, housing, education and utilities. A person subject to Income Management may access their income-managed money using the BasicsCard.

Voluntary Income Management areas

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 enables a person to enter into a written agreement with the Secretary under which the person agrees voluntarily to be subject to the Income Management regime for the period when the agreement is in force. Under section 123UM, 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.

A 'declared voluntary Income Management area' has the meaning given by section 123TGA. This section permits the Minister to determine that a State, Territory or area is a declared voluntary Income Management area for the purposes of Part 3B of the Act.

The Determination specifies Ngaanyatjarra Lands as a declared voluntary Income Management area for the purposes of paragraph 123TGA(c) of the Act.

Vulnerable Income Management areas

Under section 123UCA of the Act, a person is subject to the Income Management regime at a particular time if certain criteria are met, including:

- The person is an eligible recipient of a category H welfare payment;
- The person is a vulnerable welfare payment recipient;
- The person's usual place of residence is within a State, Territory or area specified in an instrument made under subsection 123UCA(3); and
- The person is not subject to the Income Management regime under sections 123UC, 123UD, 123UE, 123UF or 123UFAA. These sections specify other situations where a person may become subject to Income Management under Part 3B, which are activated by other instruments declaring or specifying the applicable geographic location.

Category H welfare payments include social security benefits, social security pensions, ABSTUDY payments and income support supplements, as provided under section 123TC of the Act.

Section 123UGA enables the Secretary to determine that a person is a vulnerable welfare payment recipient for the purposes of Part 3B in accordance with the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013*. A determination made by the Secretary under section 123UGA remains in force for 12 months or for a shorter period as specified in the determination. The Secretary may, by writing, vary or revoke the determination on their own initiative or at the request of the person for whom the determination is made.

Subsection 123UCA(3) permits the Minister, by legislative instrument, to specify a State, Territory or area for the purposes of placing a person on Income Management where the person is a vulnerable welfare payment recipient.

The Determination specifies Ngaanyatjarra Lands as a vulnerable Income Management area for the purposes of paragraph 123UCA(1)(b) 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. In making the Determination, the Minister is relying upon this subsection in conjunction with the instrument-making powers in section 123TGA and subsection 123UCA(3) of the Act.

Transition to alternative Income Management arrangements

The *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* abolishes the Cashless Debit Card and establishes the enhanced Income Management regime for individuals or communities who wish to keep a form of Income Management.

Part 3AA of the Act deals with the enhanced Income Management regime. A person whose usual place of residence is within the Goldfields area, which includes Laverton shire, may become subject to the enhanced Income Management regime if they voluntarily agree to be subject to the enhanced Income Management regime: see sections 123SE and 123SF.

Participants residing in Laverton shire who are subject to Income Management because they are considered vulnerable welfare payment recipients or on voluntary Income Management will have the option to voluntarily transition to the enhanced Income Management regime.

Commencement

This Determination commences on the day after registration on the Federal Register of Legislation.

Consultation

The Commonwealth Government undertook extensive engagement activities across the Goldfields region in relation to the abolition of the Cashless Debit Card program. This engagement included consultations with key stakeholders, including community leaders, local service providers, those working directly with people impacted by this instrument, and residents from Laverton shire and the Ngaanyatjarra Lands throughout September to December 2022. Over 120 face-to-face engagements were held in communities involving approximately 180 individuals, and there were a series of workshops in which community leaders and other stakeholders were able to discuss issues in greater detail.

Stakeholders did not raise issues with the continuation of this Determination and anticipated minimal, if any, adverse impacts on the community, noting the low number of participants that would be directly affected by this Determination.

Feedback throughout this engagement also noted the benefit of targeting Income Management towards particular cohorts that needed additional support or sought to volunteer to assist them to help payments to be spent on essential items, and to reduce the frequency of humbugging (a term used to describe various forms of exploitation) in the area.

Consultation on the Determination was undertaken with the National Indigenous Affairs Agency, Services Australia, the Department of Health and Aged Care and WA Government agencies.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared for the Abolishing the Cashless Debit Card (CDC) measure. The RIS's title is *Reforming the Cashless Debit Card and Income Management*, and it is available on the website of the Office of Impact Analysis, Department of the Prime Minister and Cabinet, at [Abolish the Cashless Debit Card | The Office of Impact Analysis \(pmc.gov.au\)](https://pmc.gov.au/abolish-the-cashless-debit-card). Below is the executive summary from the RIS.

Executive Summary

Currently, there are two 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.

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. Decisions made under the social security law are subject to internal and external merits review under Parts 4 and 4A of the Act.

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

Explanation of the provisions

Section 1 states that the name of the Determination is the *Social Security (Administration) (Declared Income Management areas — Ngaanyatjarra Lands) Determination 2023*.

Section 2 specifies that the Determination commences on the day after it is registered.

Section 3 provides that the Determination is made under paragraph 123TGA(c) and subsection 123UCA(3) of the Act.

Section 4 specifies that the Determination is repealed at the start of 1 October 2023. This date is aligned with the repeal dates of several legislative instruments concerning the Income Management regime and will facilitate a single thematic review of these instruments as part of the current reforms to the Income Management regime.

Section 5 lists definitions of terms used in the Determination.

The term 'Act' is defined as the *Social Security (Administration) Act 1999*.

The term 'Ngaanyatjarra Lands' is defined as the shire of Ngaanyatjarraku in Western Australia and the remote community known as Kiwirrkurra Community located within the shire of East Pilbara in Western Australia, as designated in accordance with the *Local Government Act 1995 (WA)*.

Section 6 provides that any instrument specified in a Schedule to the Determination is amended or repealed according to the terms of the relevant Schedule.

Section 7 states that Ngaanyatjarra Lands is a declared voluntary Income Management area under paragraph 123TGA(c) of the Act for the purposes of Part 3B of the Act. This continues voluntary Income Management arrangements in this area.

Section 8 specifies Ngaanyatjarra Lands as a specified vulnerable Income Management area under subsection 123UCA(3) of the Act for the purposes of paragraph 123UCA(1)(b) of the Act. This continues the compulsory vulnerable welfare payment recipient Income Management measure in this area.

Schedule 1

Item 1 repeals the whole of the 2013 Determination. This means that Laverton shire is no longer a declared voluntary Income Management area and specified vulnerable Income Management area for the purposes of paragraphs 123TGA(c) and 123UCA(1)(b) of the Act. This removes voluntary Income Management arrangements and the vulnerable welfare payment recipient Income Management measure in Laverton shire.

This ensures that existing CDC participants in Laverton shire will not return to Income Management after the CDC program ends. Instead, participants residing in this area will be able to voluntarily transition to the enhanced Income Management regime under Part 3AA of the Act if they wish to retain a form of Income Management.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Declared Income Management area — Ngaanyatjarra Lands) 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 Income Management area — Ngaanyatjarra Lands) Determination 2022 (Determination)* is made under paragraph 123TGA(c) and subsection 123UCA(3) of the *Social Security (Administration) Act 1999 (the Act)*.

The Determination ensures the continuing operation of voluntary Income Management arrangements and the vulnerable welfare payment recipient Income Management measure in the Ngaanyatjarra Lands. The Determination also repeals the *Social Security (Administration) (Declared voluntary Income Management areas—Ngaanyatjarra Lands and Laverton) Determination 2013*, to remove Laverton shire as a declared voluntary Income Management area and specified vulnerable Income Management area for the purposes of paragraphs 123TGA(c) and 123UCA(1)(b) of the Act.

For the purposes of the Determination and this Statement of Compatibility, Ngaanyatjarra Lands means the shire of Ngaanyatjarraku in Western Australia and the remote community known as Kiwirrkurra Community located within the shire of East Pilbara in Western Australia, as designated in accordance with the *Local Government Act 1995 (WA)*. Laverton shire refers to the shire of Laverton in Western Australia as designated in accordance with the *Local Government Act 1995 (WA)*.

Human rights implications

The Determination engages the following rights:

- The right to self-determination
- The right of equality and non-discrimination
- The right to an adequate standard of living, including food, water and housing
- The right to social security

Objectives

The objective of the Determination is to prevent existing Cashless Debit Card (CDC) participants in Laverton from returning to compulsory Income Management after the cessation of the CDC program, as it will no longer be required due to the establishment of enhanced Income Management.

It further ensures the continuing operation of voluntary Income Management arrangements and the vulnerable welfare payment recipient Income Management measure in the Ngaanyatjarra Lands until the Government has consulted with the community on the future of Income Management, and taken steps to ensure adequate alternative supports are in place. This approach is necessary as the Ngaanyatjarra Lands are not within an existing CDC location and as such does not have voluntary enhanced Income Management as an available alternative.

The right to self-determination

The right to self-determination is at a minimum, the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes the position of article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which 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'.

By removing Laverton as a specified vulnerable Income Management area, it returns a level of autonomy and self-sufficiency to participants that are transitioning off the CDC program. The removal of these references gives effect to the end of compulsory income management in Laverton.

The Government has consulted, and is continuing to consult, with communities that are subject to Income Management arrangements about the changes and their effect on individuals and communities. In response, the Government has introduced the voluntary enhanced Income Management program for people in Laverton for individuals to access should they determine it would benefit them.

The Determination is compatible with and supports the human right to self-determination, as individuals in Laverton will be able to spend the entirety of their welfare payments on any goods or services, when and how they choose.

The continuation of Income Management in the Ngaanyatjarra Lands will not affect the means of subsistence or political status of any person or group. It will require, subject to certain exceptions, that 50 per cent of the welfare payments of persons subject to the Income Management regime continue to be spent on priority goods and services such as food and rent. Whilst Income Management does limit a person's ability to freely dispose of all of their welfare payment, it does not affect their right to freely pursue their economic, social or cultural development.

The right of equality and non-discrimination

Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally. It ensures that no one is denied their rights because of factors such as race, colour, sex, sexual orientation, age, marital status, language, disability, religion, political or other opinion, national or social origin, property or birth.

Article 5 of the Convention of the Elimination of all forms of Racial Discrimination (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)).

The right to equality and non-discrimination are not affected by the removal of compulsory Income Management within Laverton. The removal will not apply on the basis of race or cultural factors. Individuals in Laverton will not be individually assessed for the purposes of the Determination. Eligible individuals in this area will be entitled to volunteer for enhanced Income Management should they determine it would benefit them. This will ensure a consistent approach and ongoing support across all existing CDC sites.

The Determination does not in its terms discriminate on the basis of race. Anyone who resides in the Ngaanyatjarra Lands (regardless of race), will be eligible for the continuation of Income Management, so long as the other eligibility criteria are met.

Compulsory and voluntary Income Management measures that will continue to operate in the Ngaanyatjarra Lands are centred on reasonable and objective criteria.

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

Article 11(1) of the ICESCR states that everyone has the right to 'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.

Removing Laverton as a specified vulnerable Income Management area does not limit the right to an adequate standard of living for affected people. By preventing CDC participants transitioning to compulsory Income Management once the CDC program ends, the Determination removes restrictions on how and where former participants can spend their money and provides the ability to make choices that best suit them and their families.

The continuation of Income Management in the Ngaanyatjarra Lands does not limit a person's right to an adequate standard of living. It does not reduce the amount of money they receive but restricts purchases of goods such as alcohol, tobacco and pornography.

The right to social security

Article 9 of the ICESCR recognises 'the right of everyone to social security, including social insurance'.

The Determination does not detract from the eligibility of a person to receive welfare payments, nor reduce the amount of an individual's social security entitlement.

Continuing Income Management in the Ngaanyatjarra Lands provides a mechanism to ensure that certain recipients of social security payments use a proportion of their entitlement to acquire essential items, including all of those referred to by the United Nations Committee on Economic, Social and Cultural Rights.

Conclusion

The Determination is compatible with human rights because it promotes the protection of human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The removal of compulsory Income Management in Laverton under the Determination will promote the protection of human rights by giving individuals appropriate choice over how they receive their welfare payments. As part of the transition, welfare payment recipients will be provided with a range of supports,

including voluntary enhanced Income Management, that individuals can choose to use when, how and in a way that suits them.

The continuation of Income Management in the Ngaanyatjarra Lands will support the protection of human rights by ensuring that welfare payments are spent in the best interests of welfare recipients and their dependants, whilst also helping to improve their budgeting skills so they can meet their priority needs.

The Determination does not impose any further limitation to that currently in effect in the Ngaanyatjarra Lands, instead continues existing arrangements to ensure time for meaningful consultation to occur on the future of Income Management in the area.

The Hon Amanda Rishworth MP, Minister for Social Services