

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Indigenous Australians

*Social Security Act 1991*

### ***Social Security (Remote Engagement Program Payment) Determination 2023***

#### **GENERAL MATTERS**

##### **Purpose and operation**

The *Social Security (Remote Engagement Program Payment) Determination 2023* (the Instrument) is made under Part 2.13 of the *Social Security Act 1991* (the Act).

Subsection 661A(2) of the Act allows the Minister to determine (a) an arrangement to be the remote engagement program, and (b) a part of the remote engagement program to be a remote engagement placement. Subsection 661E(2) of the Act allows the Minister to determine the rate of payment of a remote engagement program payment.

This Instrument determines the arrangement that is the remote engagement program and the part of that program that is a remote engagement placement. It also determines the rate of payment of a remote engagement program payment.

This Instrument is required under paragraphs 661A(2)(a) and (b) and subsection 661E(2) of the Act to make remote engagement program payments to participants in the remote engagement program trials.

##### **Background and Objectives**

The Government has committed to replace the Community Development Program (CDP) with a new program with real jobs, proper wages and decent conditions – developed in partnership with First Nations peoples.

The remote engagement program will use a co-design approach to trial approaches which may be adopted in the development of a new program. The remote engagement program will be trialled in CDP Region 3 – Ngaanyatjarra Lands.

A key objective of the remote engagement program is to test ideas and understand barriers to employment in remote areas. The key components of the remote engagement program are the remote engagement placement and the remote engagement program payment, which will trial an incentive for eligible participants to participate in a placement designed to build skills that will support them to find and maintain employment and contribute to their community.

The remote engagement program trial provides an opportunity to test incentives for economic and community participation in a very remote region of Australia that is a significant distance from a regional centre. Specifically, whether receiving an additional \$190 a fortnight in supplementary income support payment is an incentive for jobseekers to participate in a placement for at least 15 hours per week.

The remote engagement program trial will be administered through a new part to Annexure 1 to the existing Head Agreement for the Community Development Program 2019 – 2024, which applies only to remote engagement program providers. The remote engagement program and this Instrument have no impact on arrangements for CDP participants outside CDP Region 3.

In order to participate in a remote engagement placement, an eligible participant will need to enter into a Remote Engagement Program Placement Agreement. The Remote Engagement Program Placement Agreement will also be signed by the organisation hosting the remote engagement placement and the remote engagement program provider.

The Remote Engagement Program Placement Agreement will set out the:

- Hours and location of the remote engagement placement;
- Duties and activities to be undertaken as part of the remote engagement placement; and
- Circumstances in which a remote engagement placement may be cancelled or amended.

Each eligible participant who has executed a Remote Engagement Program Placement Agreement with a remote engagement program provider and a remote engagement program host may be entitled to receive a remote engagement program payment each fortnight if they meet the requirements of their remote engagement placement.

There are two CDP providers in CDP Region 3 – Ngaanyatjarra Lands WA. Paupiyala Tjarutja Aboriginal Corporation provides CDP services to Tjuntjuntjara and Ngaanyatjarra Council Aboriginal Corporation provides CDP services to all other parts of CDP Region 3.

A period of co-design and consultation in CDP Region 3 – Ngaanyatjarra Lands, facilitated via both CDP providers, informed the decision that the rate of the remote engagement payment will be set at \$190 per fortnight. Co-design and consultation have also informed the other parts of the trial.

### *Commencement*

The Instrument commences on the day after the Instrument is registered.

### *Disallowance*

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

### **Consultation**

The two remote engagement program providers, the Paupiyala Tjarutja Aboriginal Corporation and the Ngaanyatjarra Council Aboriginal Corporation, have engaged with communities regarding the remote engagement program and sought agreement from their respective community boards.

Co-design and consultation with the providers and the broader communities have informed the design of the remote engagement program, including for the purpose of this Instrument the rate of fortnightly payment.

The Departments of the Prime Minister and Cabinet; Employment and Workplace Relations; Social Services (including Services Australia); the Treasury and Finance were also consulted on this Instrument.

## **Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights commences from page 6.

## **COMMON INSTRUMENT SPECIFIC MATTERS**

### **Availability of independent review**

Under subsection 23(17) of the Act, 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 according to Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

Participants will be provided with information about the remote engagement program trial including qualification criteria for receipt of the remote engagement program payment, participation requirements for remote engagement placements and the various supports available to them. Participants will be notified of complaint, feedback and review options including contact information for Services Australia and the National Customer Service Line for participants seeking further support, as well as NIAA Complaints contact details.

### **Incorporation by reference**

Paragraph 15J(2)(c) of the *Legislation Act 2003* provides that all documents referred to in instruments must be described, and an indication given as to how they can be obtained. The remote engagement program is described as the arrangement set out in Part G of Annexure 1 to the Head Agreement for the Community Development Program 2019 -2024 between the Commonwealth and Paupiyala Tjarutja Aboriginal Corporation, and the Commonwealth and the Ngaanyatjarra Council Aboriginal Corporation. The documents are incorporated as in force on 3 July 2023.

The new Part G of Annexure 1 to the Head Agreement for the Community Development Program 2019-2024 for each provider is available on the NIAA's website and sets out the parameters of the remote engagement program and forms the basis of the commercial arrangements for providers' service delivery obligations.

Remote engagement program participants will be provided with information on the remote engagement program payment and remote engagement placement, including how they can access or change a remote engagement placement, participation requirements, and how remote engagement placements may be brought to an end, by accessing fact sheets that will be made available to remote engagement program participants through their remote engagement program provider. The fact sheets will include Services Australia contact information and National Customer Service Line contact information for participants seeking further support.

Participants will also receive information about the program through the agreement that will be entered into between the participant, host organisation and REP provider. REP Providers have a positive obligation to explain content of agreements and fact sheets to participants.

These steps ensure that individuals understand the program and their placement, the benefit to them, how they can change or end a placement, the complaint process and eligibility requirements in a way that is more directly relevant for the general public and participants in particular.

### **Regulatory Impact Assessment**

The Determination does not require a Regulatory Impact Statement (Reference OBPR ID 43345). It is not regulatory in nature nor will it affect business activity. It will have no, or minimal, compliance cost or competition impact.

## NOTES ON CLAUSES

### Clause 1 – Name

2. Clause 1 provides for the Instrument to be cited as the *Social Security (Remote Engagement Program Payment) Determination 2023*.

### Clause 2 – Commencement

3. Clause 2 sets out the commencement details for the Instrument. Specifically, the table in subclause 2(1) provides that the whole of the Instrument will commence on the day after the Instrument is registered.

### Clause 3 – Authority

4. Clause 3 provides that the Instrument is made under the *Social Security Act 1991*.

### Clause 4 – Definitions

5. Clause 4 provides the meaning of terms used in the Instrument.

The note at clause 4 provides that the expressions *remote engagement placement* and *remote engagement program* are defined in the Act.

*Act* means the *Social Security Act 1991*.

### Clause 5 – Remote Engagement Program

6. Clause 5 provides for the arrangements that are the remote engagement program for the purposes of paragraph 661A(2)(a) of the *Social Security Act 1991*. Specifically, subclause (a) provides that the arrangement set out in Part G of Annexure 1 to the Head Agreement for the Community Development Program 2019-2024, as in force on 3 July 2023, between the Commonwealth and the Paupiyala Tjarutja Aboriginal Corporation is the remote engagement program. Subclause (b) provides that the arrangement set out in Part G of Annexure 1 to the Head Agreement for the Community Development Program 2019-2024, as in force on 3 July 2023, between the Commonwealth and the Ngaanyatjarra Council Aboriginal Corporation, is also the remote engagement program.

### Clause 6 – Remote Engagement Placement

7. Clause 6 provides for the parts of the remote engagement program that are a remote engagement placement under the program. Specifically, subclause (a) provides that a remote engagement placement is the REP Placement set out in Part G of Annexure 1 to the Head Agreement mentioned in paragraph 5(a) of the Instrument, which refers to the agreement between the Commonwealth and the Paupiyala Tjarutja Aboriginal Corporation. Subclause (b) provides that that a remote engagement placement is the REP Placement set out in Part G of Annexure 1 to the Head Agreement mentioned in paragraph 5(b) of the Instrument, which refers to the agreement between the Commonwealth and the Ngaanyatjarra Council Aboriginal Corporation.

### Clause 7 – Remote Engagement Program Payment

8. Clause 7 provides that the rate of payment per fortnight of the remote engagement program payment is \$190 for the purposes of 661E(2) of the Act.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Social Security (Remote Engagement Program Payment) Determination 2023**

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**

This Instrument facilitates the making of the remote engagement program payment for participants in the Remote Engagement Program Trial (remote engagement program). This Instrument determines the arrangement that is the remote engagement program and the part of that program that is a remote engagement placement. It also determines the rate of payment of a remote engagement program payment.

This Instrument is required under 661A(2) and subsection 661E(2) of the *Social Security Act 1991*, to establish the remote engagement program and make remote engagement program payments to participants in the remote engagement program.

#### **PURPOSE AND OBJECTIVES**

The purpose of the Instrument is to establish the remote engagement program and enable to remote engagement program payment. The objective of the remote engagement program is to trial ideas and understand barriers to employment in remote areas. The key components of the remote engagement program are the remote engagement placement and the remote engagement program payment, which will trial an incentive for eligible participants to participate in a placement designed to build skills that will support them to find and maintain employment and contribute to their community.

#### **Human rights implications**

This Instrument engages the following human rights:

- *Right to work*: Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- *Right to social security*: Article 9 of the ICESCR.
- *Right to an adequate standard of living*: Article 11(1) of the ICESCR.
- *Right of equality and non-discrimination*: Article 2 of the ICESCR, Articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD).
- *Right to self-determination*: Article 1 of the ICCPR and Article 1 of the ICESCR.

### ***Right to work***

Article 6(1) of the ICESCR recognises the right of everyone to work, including the opportunity to gain their living by work which they freely choose or accept. Article 6(2) of the ICESCR further provides that the progressive realisation of this right by States includes implementing technical and vocational guidance and training program, and policies which facilitate full and productive employment.

This Instrument will enable the payment of the remote engagement program payment to remote jobseekers participating in remote engagement placements under the remote engagement program. By enabling the remote engagement program payment, the Instrument strengthens existing incentives for remote jobseekers to actively engage with Commonwealth employment programs, which in turn will improve their skills and assist jobseekers to transition to, and remain in, paid work in the open labour market. The Instrument therefore advances the right to work.

### ***Right to social security and right to adequate standard of living***

Article 9 of the ICESCR recognises the right of everyone to social security, including social insurance. Article 11(1) of the ICESCR recognises the right of everyone to have an adequate standard of living for themselves.

The United Nations Committee on Economic, Social and Cultural Rights (the ESCR Committee) has stated that the right to social security is of ‘central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights’.<sup>1</sup> The ESCR Committee further noted that the right to social security encompasses the right to access and maintain benefits, and must be sufficient to afford an adequate standard of living.<sup>2</sup>

The Instrument advances the right to social security by enabling the payment of the remote engagement program payment, which increases the social security benefits available to participants in the remote engagement placement. This allows those individuals to improve their standard of living while building skills and experience to support them to find a job and contribute to their community. The Instrument therefore advances the rights to social security and an adequate standard of living.

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<sup>1</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19 at [1].

<sup>2</sup> Ibid, at [2], [22].

### ***Rights of equality and non-discrimination***

The rights of equality and non-discrimination are contained in Articles 2, 3, 16 and 26 of the ICCPR, Article 2 of the ICESCR, Article 5 of the CERD and Article 5 of the CRPD. These rights recognise that all human beings have the right to be treated equally and not to be discriminated against.

The Instrument advances the rights of equality and non-discrimination by facilitating the remote engagement program trial, which will explore ways to overcome the barriers faced by remote job seekers in reaching full economic participation. The bespoke nature of the remote engagement program trial recognises the challenges of the remote labour market and aims to inform measures that build economic participation for job seekers in remote areas. Participants in the remote engagement program trial will be provided with opportunities to enhance their employment prospects through hosted placements, which will build their skills and employability. The Instrument therefore promotes equality through facilitating the trialling of new measures that aim to build economic participation for remote job seekers, increase opportunities to gain skills, and overcome the differences in employment opportunities and consequential disadvantage experienced in parts of remote Australia.

### ***Right to self-determination***

The right to self-determination is contained in Article 1 of the ICCPR and Article 1 of the ICESCR. This right recognises that all peoples have the right of self-determination, and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The Instrument advances the right to self-determination by facilitating the remote engagement program trial, which will be developed in partnership with First Nations peoples. The remote engagement program trial will test ideas and explore the barriers faced by remote job seekers in reaching full economic participation in a remote labour market. This will ensure that First Nations individuals and communities will have a say in the development of the new program to replace the Community Development Program, and that the new program is tailored to the needs of remote communities. This Instrument promotes the right to self-determination by facilitating the making of the remote engagement program payment to eligible participants in a remote engagement placement, thereby allowing recipients to freely pursue economic and cultural development.

### ***Conclusion***

The Instrument is compatible with human rights because it promotes the right to work, the rights to social security and an adequate standard of living, the rights of equality and non-discrimination and the right to self-determination.