

# **Social Security (Administration) (Enhanced Income Management Regime—Volunteers) Determination 2023**

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*Social Security (Administration) Act 1999*

### **Purpose**

The Social Security (Administration) (Enhanced Income Management Regime—Volunteers) Determination 2023 (the Determination) is made for the purpose of enhanced income management (enhanced IM) in Part 3AA of the *Social Security (Administration) Act 1999* (the Act).

The effect of the Determination is to enable individuals to participate in the enhanced IM regime on a voluntary basis (section 123SF of the Act).

The Determination enables a person whose usual place of residence is within a declared voluntary enhanced IM area to enter into a written agreement with the Secretary under which the person agrees to be voluntarily subject to the enhanced IM regime. If the various criteria under the applicable provisions are satisfied, a portion of the person's relevant welfare payments will be directed to their priority needs, such as food, clothing and shelter of the person and their dependents.

### **Background**

The enhanced IM regime in Part 3AA was inserted into the Act by the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* (CDC Repeal Act) and began operating from 6 March 2023.

The purpose of the enhanced IM regime is to ensure that welfare payments are not spent on products and services that contribute to social harm and, in conjunction with a support services program, to provide budgeting support for participants.

Welfare recipients who are subject to the enhanced IM regime will have access to a BasicsCard bank account with an associated debit card (known as a SmartCard) that operates like a standard Visa Debit card (except that cash cannot be withdrawn). A SmartCard can be used to make purchases at most merchants who can undertake eftpos transactions unless they primarily offer excluded goods or excluded services. People subject to the enhanced IM regime are also able to access a range of mainstream banking functions including 'Tap and Go' payments, online shopping and BPAY. This means that the enhanced IM regime operates superior technology to that available under the income management (IM) regime in Part 3B of the Act while operating under a similar legislative framework.

The *Social Security (Administration) Amendment (Income Management Reform) Act 2023* (IM Reform Act) will expand access to enhanced IM by including all of the same measures that are in place for the IM regime in Part 3B of the Act. This allows people subject to the IM regime under Part 3B the choice to move to enhanced IM as well as allowing new entrants that meet the eligibility criteria to enter enhanced IM.

Part 3B of the Act has been operating in some form for more than 15 years, and over that time a large number of legislative instruments have been made to facilitate its operation. Similarly, Part 3AA of the Act requires legislative instruments to operate. Many of the instruments necessary to operationalise aspects of enhanced IM are equivalent to existing IM instruments. Where an instrument is required under the enhanced IM regime, the content of the equivalent IM instruments has been adapted and consolidated into a select number of enhanced IM instruments rather than replicating each instrument individually.

This Determination reflects the content of 4 instruments made under Part 3B of the Act into a single instrument, specifying locations in which welfare recipients can volunteer for enhanced IM.

### Volunteers

Eligibility criteria for the ‘volunteers measure’ is outlined in section 123SF of the Act. The Secretary and an individual may enter into a voluntary agreement under which the person becomes subject to the enhanced IM regime under Part 3AA of the Act. Section 123SE of the Act provides that a person is subject to the enhanced IM regime at a particular time if a voluntary enhanced IM agreement is in force in relation to the person. A ‘voluntary enhanced income management agreement’ is defined in section 123SB of the Act as an agreement under section 123SF of the Act.

Section 123SF provides that the Secretary can only enter into a voluntary enhanced income management agreement if, among other things, the person’s usual place of residence is within a declared voluntary enhanced income management area or the Ceduna area, the East Kimberley area, the Goldfields area or the Bundaberg and Hervey Bay area. The term ‘voluntary enhanced income management area’ has meaning given by section 123SF(5) of the Act.

Section 123SF(5) of the Act provides that the Minister may, by legislative instrument, determine that:

- a specified State; or
- a specified Territory; or
- a specified area;

is a voluntary enhanced income management area for the purposes of Part 3AA of this Act.

### **Commencement**

The Determination will commence on the later of the day after it is registered and the day on which the IM Reform Act commences.

### **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 expressly triggered by the Determination.

Information collected 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.

### **Consultation**

Extensive consultation has been undertaken with affected communities in relation to abolishing the Cashless Debit Card program and reforming income management. This included the introduction and passage of the CDC Repeal Act and the IM Reform Act.

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

### **Impact Analysis**

An Impact Analysis (IA) was prepared and is titled *Reforming the Cashless Debit Card and Income Management*. The IA 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 IA 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) (Enhanced Income Management Regime—Volunteers) Determination 2023*.

**Section 2** provides that the Determination commences on the later of:

- the day after the Determination is registered on the Federal Register of Legislation; and

- the day on which the *Social Security (Administration) Amendment (Income Management Reform) Act 2023* commences.

**Section 3** provides that the authority for making the Determination is subsection 123SF(5) of the Act.

**Section 4** outlines definitions for the purpose of the Determination.

In this instrument:

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

#### Part 2—Voluntary enhanced income management areas

**Section 5** provides that for the purposes of Part 3AA of the Act, the Northern Territory has been determined to be a voluntary enhanced income management area.

In addition, the Determination specifies areas covered by the following legislative instruments:

- an area covered by the *Social Security (Administration) (Declared income management area — Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012*;
- an area covered by the *Social Security (Administration) (Declared income management areas — Ngaanyatjarra Lands) Determination 2023*;
- an area covered by the *Social Security (Administration) (Declared voluntary income management areas — New South Wales, Queensland, South Australia and Victoria) Determination 2012*;
- an area covered by the *Social Security (Administration) (Declared voluntary income management areas — Western Australia) Determination 2022*.

As at the date that the Determination was made, the following areas are covered by the above instruments:

- South Australia: Anangu Pitjantjatjara Yankunytjatjara lands, Greater Adelaide and Playford;
- Western Australia: Ngaanyatjarra Lands, Kimberley and Perth Metropolitan ;
- New South Wales: Bankstown;
- Queensland: Logan, Rockhampton, Livingstone;
- Victoria: Greater Shepparton

## Statement of Compatibility with Human Rights

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

### **Social Security (Administration) (Enhanced Income Management Regime—Volunteers) Determination 2023**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

The *Social Security (Administration) (Enhanced Income Management Regime—Volunteers) Determination 2023* (the Determination) operationalises certain aspects of the enhanced Income Management (enhanced IM) regime established by Part 3AA of the *Social Security (Administration) Act 1999* (the Act). The Determination is required to support amendments that will be made by the *Social Security (Administration) Amendment (Income Management Reform) Act 2023* (the IM Reform Act), which expands access to the enhanced IM regime.

This Determination declares the areas in which voluntary enhanced IM operates in addition to those specified in the Act. This Determination allows eligible welfare payment recipients who are residents of those areas to enter into an agreement with the Secretary to be voluntarily subject to enhanced IM for a minimum period of 13 weeks.

#### **Objectives**

The objective of this Determination is to provide a mechanism to commence and operate voluntary enhanced IM in specified areas (section 123SF of the Administration Act) and provide participants with access to modern banking technology. This Determination responds to feedback from communities and the Senate Standing Committee on Community Affairs inquiry into the *Social Services (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* that the technology supporting the Income Management regime under Part 3B of the Administration Act is insufficient to meet the needs of communities.

#### **Human rights implications**

The determination engages the following rights and freedoms:

- the right to self-determination
- the right to an adequate standard of living, including food, water and housing
- the right to social security

#### Right to self determination

Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that *'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'*.

Enhanced IM works by directing a proportion of certain welfare payments to priority needs such as food, housing, clothing and utilities. Qualified funds cannot be spent on alcohol, tobacco, pornography or gambling. This Determination relates only to people who receive a relevant welfare payment and choose to participate in enhanced IM. Participation in voluntary enhanced IM is predicated on a person self-identifying that they would benefit from having a portion of their welfare payments set aside to pay for their priority needs.

While this measure does limit a person's ability to freely dispose of all of their resources (as a portion of their funds can only be spent on priority needs), this is done only at their request and therefore does not limit their right to self-determination.

#### 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'*. Further to this, article 11(2) of the ICESCR states that *'measures, including specific programmes,'* should be taken in *'recognising the fundamental right of everyone to be free from hunger'*.

This Determination advances the right to an adequate standard of living under Article 11(1) of the ICESCR by ensuring that money is available for priority goods such as food, clothing, education and housing, and provides resources to help people develop good budgeting practices. Voluntary enhanced IM provides participants the opportunity to make choices that best suit themselves and their families.

#### The right to social security

Article 9 of the ICESCR recognises *'the right of everyone 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, within its maximum available resources, to provide *'a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education'*.

This Determination does not affect the eligibility of a person to receive welfare payments, nor reduce the amount of a person's welfare payments. It simply allows individuals to choose to have a portion of their welfare payments qualified to meet their basic needs, such as rent, food, and household bills. The remaining portion of the person's welfare payment can be used at their discretion. Therefore, the parameters made by this Determination do not limit the right to social security.

## **Conclusion**

This Determination is compatible with human rights. It advances the protection of human rights by allowing certain income support recipients to volunteer for enhanced IM so they can continue to meet their priority needs and improve the standard of living for themselves and their dependants.

**[Circulated by the authority of the Minister for Social Services,  
the Hon Amanda Rishworth MP]**

## Impact Analysis 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.