

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

The effect of the Determination is to enable operation of the vulnerable welfare payment recipient, disengaged youth and long-term welfare payment recipient measures under the enhanced IM regime (sections 123SCL, 123SD and 123SDA of the Act respectively). These measures are considered ‘Commonwealth Referrals’ as they operate on the basis of a Commonwealth official (that is, the Secretary or a delegate) identifying whether an individual is eligible for enhanced IM regime after an assessment of their particular circumstances.

The Determination enables the vulnerable welfare payment recipient, disengaged youth and long term welfare payment recipient measures to operate by specifying:

- locations in which eligible individuals must reside (where applicable); and
- decision-making principles the Secretary must consider when deciding whether to determine that a person is:
 - a vulnerable welfare payment recipient for the purpose of section 123SCL of the Act
 - an exempt welfare payment recipient under sections 123SDB and 123SDD of the Act.

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associated debit card (known as a SmartCard) that operates like a standard Visa Debit card (except that cash cannot be withdrawn).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) expands 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 deals with Commonwealth referrals. It reflects the content of 9 instruments made under Part 3B of the Act into a single instrument specifying locations and decision-making principles for the purpose of the vulnerable welfare payment recipient, disengaged youth and long term welfare payment recipient measures under the enhanced IM regime.

Vulnerable welfare payment recipients

Eligibility criteria for the vulnerable welfare payment recipient measure is set out in section 123SCL of the Act. A person will be subject to the enhanced IM regime under section 123SCL if they, among other things, reside in a specified area and the Secretary has made a determination that they are a vulnerable welfare payment recipient (which remains in force).

Section 123SCM enables the Secretary to make a written determination that a person is a vulnerable welfare payment recipient for this purpose. In making a determination under section 123SCM, the Secretary must comply with any decision-making principles that have been made.

The Determination enables the vulnerable welfare payment recipient measure to operate by specifying:

- locations in which an individual must reside to be eligible, and
- decision-making principles that may set out when the Secretary must make a determination that a person is a vulnerable welfare payment recipient.

Disengaged youth and long-term welfare payment recipients

Disengaged youth

A person will be subject to the enhanced IM regime under the disengaged youth measure if, among other things, they:

- reside in the Northern Territory (subsection 123SD(1)) or a specified area (subsection 123SDA(1))
- are at least 15 years of age and under 25 years of age
- are not an exempt welfare payment recipient (discussed further below)
- were an eligible recipient of an eligible welfare payment for at least 13 out of the previous 26 weeks

Long-term welfare payment recipients

A person will be subject to the enhanced IM regime under the long-term welfare payment recipient measure if, among other things, they:

- reside in the Northern Territory (subsection 123SD(3)) or a specified area (subsection 123SDA (5))
- are at least 25 years of age but have not reached pension age
- are not an exempt welfare payment recipient (discussed further below)
- were an eligible recipient of an eligible welfare payment for at least 52 out of the previous 104 weeks

Applicable locations

Section 123SD provides for the disengaged youth and long-term welfare payment recipient measures in enhanced IM to operate in the Northern Territory.

While subsections 123SDA(2) and 123SD(5) also allow the Minister, by legislative instrument, to determine additional States, Territories or areas, this instrument does not specify any additional locations.

Exempt welfare payment recipient

Both the disengaged youth and long-term welfare payment recipient measures require that a person is not an exempt welfare payment recipient.

Sections 123SDB, 123SDC, and 123SDD of the Act outline the criteria for when the Secretary may determine that a person is an exempt welfare payment recipient. Each provision deals with a different set of circumstances:

- section 123SDB provides that the Secretary may determine a person is an exempt welfare payment recipient if they fall within a specified class of persons

- section 123SDC provides that the Secretary may determine a person who is not the principal carer of a child is an exempt welfare payment recipient if they meet certain criteria
- section 123SDD provides that the Secretary may determine a person who is the principal carer of a child is an exempt welfare payment recipient if they meet certain criteria

The Determination enables section 123SDB to operate by specifying a class of persons the Secretary may determine to be an exempt welfare payment recipient.

Although section 123SDC enables the Minister to make an instrument regarding particular activities for a person to undertake, this is not required for the provision to operate. There is no equivalent IM instrument, and this is not covered in the Determination.

Section 123SDD relies on numerous matters being specified in a legislative instrument. These include:

- activities for a school age child
- number and kind of activities for a child other than a school age child, and
- decision-making principles to be considered in deciding whether a person has indications of financial vulnerability

The Determination enables section 123SDD to operate by specifying each of these matters.

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.

Part 2 of the Determination contains decision-making principles that the Secretary must comply with in deciding whether to make, vary or revoke a determination that a person is a vulnerable welfare payment recipient. These are factors to be considered in making a decision under the Act, rather than decision-making powers per se. If, after considering the decision-making principles specified in the Determination, the Secretary decides to make a determination under the Act that a person is a vulnerable welfare payment recipient, the person has the ability to request

reconsideration of their circumstances along with the ordinary internal and external review provisions contained in the Act.

Part 3 similarly contains specifications relating to a determination made under the Act that a person is an exempt welfare payment recipient. These specifications are relevant to the Secretary making such a determination under the Act, but are not decision-making powers. A determination made by the Secretary that a person is an exempt welfare payment recipient will have the effect of excluding them from the enhanced IM regime under the disengaged youth and long-term welfare payment recipient measures. If an individual is determined by the Secretary to be an exempt welfare payment recipient, they are still entitled to voluntarily enter the enhanced IM regime which removes any negative impact on the person by such a determination being made. Regardless, a person may utilise the internal and external review provisions under the Act if they choose to do so.

Information collected in relation to a person who is subject to the enhanced IM 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. There are additional provisions permitting sharing of information relating to the exempt welfare payment recipient provisions, with the express purpose of enabling the Secretary to decide whether or not to make such a determination.

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—Commonwealth Referrals and Exemptions) Determination 2023*.

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

- the day after it is registered on the Federal Register of Legislation, and
- the day on which the Income Management Reform Act commences.

Section 3 provides that the authority for making the Determination is subsections 123SCL(5), 123SCM(12), 123SDB(2) and 123SDD(2), (3) and (6) of the Act.

Section 4 outlines definitions for the purpose of the Determination.

Subsection 4(1) provides general definitions that apply in this instrument, incorporating definitions from the Act, the *A New Tax System (Family Assistance) (Administration) Act 1999*, and the *Social Security Act 1991*. The following additional definitions are also included in subsection 4(1):

Centrepay means the voluntary deduction service provided by Services Australia under section 61A of the Act.

program of regular health and development assessments, for a child, means a series of health and development assessments that are provided to the child:

- (a) by one or more treating health professionals; and
- (b) in accordance with the schedule of health and development assessments for a child of the same age, as set out in the record published by the Northern Territory and known as the My child health record, as in force when this instrument commences.

relevant priority needs, in relation to a person, means the priority needs (within the meaning of section 123TH of the Act) of the person and the priority needs (within the meaning of that section) of each of the following:

- (a) any child of the person;
- (b) any partner of the person;
- (c) any other dependants of the person.

strategies includes tools and training.

treatment includes care.

Subsection 4(2) provides that each of the following circumstances are an **indicator of vulnerability**:

- financial exploitation;
- financial hardship;
- failure to undertake reasonable self care;
- homelessness or risk of homelessness.

Relatedly, subsections 4(3) to (6) are interpretation provisions that respectively set out when a person is experiencing financial exploitation, financial hardship, failure to undertake reasonable self-care and homelessness or risk of homelessness.

Part 2—Vulnerable welfare payment recipients

Division 1—Specified States, Territories and areas

Section 5 specifies States, Territories, and areas for the purpose of paragraph 123SCL(1)(a) of the Act (being a location in which a person must reside to be eligible for enhanced IM under this measure).

Section 5 of the Determination specifies the Northern Territory for this purpose, along with areas covered by the following legislative instruments:

- *Social Security (Administration) (Declared income management area — Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012;*
- *Social Security (Administration) (Declared income management area — Ngaanyatjarra Lands) Determination 2023;*
- *Social Security (Administration) (Vulnerable income management areas) Specification 2012.*

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

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

Division 2—Decision-making principles

Section 6 refers to subsections 123SCM(2) and (6) of the Act, which provide that in making, varying or revoking a determination that a person is a vulnerable welfare payment recipient, the Secretary must comply with any decision-making principles that have been made under subsection 123SCM(12).

Section 6 of the Determination confirms that the decision-making principles for the purpose of subsections 123SCM(2) and (6) of the Act are set out in sections 7 and 8 of the Determination. This is included to assist the reader in navigating the Determination.

Section 7 sets out the decision-making principles that the Secretary must consider in deciding whether to make, vary or revoke a determination that a person is a vulnerable welfare payment recipient. Notes to subsections 7(1) and (2) advise the reader that section 7 does not apply to certain persons and point the reader to subsection 7(8), which in turn refers to determinations made or required to be made in accordance with section 8 of the Determination.

Subsection 7(1) sets out the matters that must be considered by the Secretary in deciding whether to make a determination that a person is a vulnerable welfare payment recipient. Specifically, under paragraphs 7(1)(a) and (b) respectively, the Secretary must consider whether the person is:

- experiencing an indicator of vulnerability (as defined in subsection 4(2)) and, if so, whether being subject to the enhanced IM regime would be an appropriate response to that indicator;
- applying appropriate resources to meet some or all of their relevant priority needs and whether being subject to the enhanced IM regime would assist the person to apply appropriate resources to meet some or all of those needs.

Subsection 7(2) sets out the matters that must be considered by the Secretary in deciding whether to vary or revoke an existing determination that a person is a vulnerable welfare payment recipient. Specifically, under paragraphs 7(2)(a) and (b) respectively, the Secretary must consider whether the person is likely:

- to experience an indicator of vulnerability (as defined in subsection 4(2)) if the variation or revocation were made, and if so whether being subject to the enhanced IM regime would be an appropriate response to that indicator;
- not to apply appropriate resources to meet some or all of their relevant priority needs if the variation or revocation were made, and whether being subject to the enhanced IM regime is assisting the person to apply appropriate resources to meet some or all of those needs.

These provisions require the Secretary to give consideration to whether the enhanced IM regime is an appropriate option to assist a vulnerable individual in overcoming their identified vulnerability or vulnerabilities. This will ensure only vulnerable individuals who are likely to experience a tangible benefit from the enhanced IM regime are referred to, and remain subject to, that regime under the vulnerable welfare payment recipient measure.

Subsections 7(3) to (8) are described as ‘Common rules’ and provide supplementary guidance to the decision-making principles provided in subsections 7(1) and (2).

Subsection 7(3) provides that subsections 7(1) and (2) do not limit the matters the Secretary may consider. This ensures the Secretary may give consideration to other relevant matters in deciding whether to make, vary or revoke a determination that a person is a vulnerable welfare payment recipient.

Subsection 7(4) confirms that when considering whether a person is experiencing or is likely to experience an indicator of vulnerability, the Secretary may act on the basis of relevant documents and information in the Secretary’s possession. This ensures that the Secretary may take account of all available and relevant information.

Subsection 7(5) states that for the purpose of subsection 7(1), even if the person is willing to enter, or has entered, into a voluntary enhanced IM agreement with the Secretary under section 123SF of the Act, the Secretary may be satisfied that enhanced IM:

- (a) would be, or is, an appropriate response to an indicator of vulnerability; or
- (b) would assist, or is assisting, the person to meet some or all of their relevant priority needs.

Subsection 7(6) provides a specified range of matters that the Secretary must have regard to in considering whether the enhanced IM regime:

- (a) would be, or is, an appropriate response to an indicator of vulnerability; or
- (b) would assist, or is assisting, the person to meet some or all of their relevant priority needs.

Specifically, the Secretary must have regard to the following matters:

- all the relevant personal circumstances of the person;
- any services (however described) that are available, or that can be made available, to the person;
- if the person is, or has been, subject to the enhanced IM regime:
 - any changes that have occurred to the person's personal circumstances during the period in which the person was subject to that regime; and
 - the likely impact on the person, and on any dependants of the person, of the person being the subject of a determination under subsection 123SCM(1) of the Act that they are a vulnerable welfare payment recipient;
- if there is a determination under subsection 123SCM(1) of the Act in force in relation to the person and the Secretary proposes to vary or revoke that determination—the likely impact on the person, and on any dependants of the person, of the proposed variation or revocation.

Subsection 7(7) provides that the Secretary is not limited to having regard to only those matters mentioned in subsection 7(6).

Subsection 7(8) provides that section 7 does not apply to a person if:

- (a) the Secretary is required to make a determination that the person is a vulnerable welfare payment recipient because of section 8 of the Determination; or
- (b) a determination that the person is a vulnerable welfare payment recipient because of section 8 of the Determination is in force.

Section 8 sets out decision-making principles for making or revoking a determination that a person is a vulnerable welfare payment recipient for individuals falling within particular circumstances. In practice, the decision-making principles contained in section 8 must be considered by the Secretary before the principles contained in section 7 as section 7 will only apply if section 8 does not.

Subsection 8(1) requires the Secretary to determine that a person is a vulnerable welfare payment recipient if any of the following circumstances apply to the person:

- (a) the person is aged under 16 and is receiving special benefit; or

- (b) the person is aged 16 or over but under 22 and is receiving one of the following payments at a rate worked out on the basis that the person is independent because of subsection 1067A(9) of the *Social Security Act 1991*:
 - (i) youth allowance; or
 - (ii) disability support pension; or
 - (iii) a payment under the ABSTUDY Scheme;

Subsection 1067A(9) of the Social Security Act provides, in essence, that a person is considered independent if it is unreasonable for them to live at home and they are not receiving financial or other support beyond income support in the form of a social security benefit.

- (c) the person is aged under 25 and has, within the last 13 weeks, received a crisis payment because of being qualified for the payment under section 1061JG of the *Social Security Act 1991* (Social Security Act).

Section 1061JG of the Social Security Act provides for circumstances in which a person who was recently released from gaol or psychiatric confinement is qualified for crisis payment.

Subsection 8(2) provides a number of exceptions to subsection 8(1), being circumstances in which the Secretary is not required to determine that a person who falls within the above circumstances is a vulnerable welfare payment recipient. These exceptions are where the Secretary is satisfied that:

- (a) being subject to the enhanced IM regime would place the person's mental, physical or emotional wellbeing at risk, including that the person:
 - (i) is not able to meaningfully engage in the enhanced IM process due to mental health issues; or
 - (ii) does not have the capacity to comprehend the operation of enhanced IM; or
 - (iii) is experiencing serious instability in the person's housing or living situation and enhanced IM would affect the person's ability to direct funds to housing; or
- (b) the person is undertaking full time study or is an apprentice (which are both defined terms in the Act); or
- (c) within at least 4 of the last 6 fortnights, the person has received less than 25% (other than because a compliance penalty period applied to the person) of:
 - (i) the maximum basic rate of youth allowance or disability support pension or the maximum fortnightly rate of a payment made under the ABSTUDY Scheme; or

- (ii) the equivalent rate of special benefit (which is a defined term in the Act); or
- (iii) if the person has received crisis payment—the maximum basic rate of the social security pension or social security benefit payable to the person under section 1061JU of the Social Security Act; or
- (d) the person is subject to the enhanced IM regime as a volunteer; or
- (e) the person meets the criteria in paragraph (a) or (b), and at least once in the previous 12 months a determination has been made that the person is a vulnerable welfare payment recipient.

Subsection 8(3) contains decision-making principles the Secretary must consider in deciding whether to revoke a determination that a person is a vulnerable welfare payment recipient made because of subsection 8(1) of the Determination. Subsection 8(3) requires the Secretary to consider the matters set out in that subsection and “no other matters”, making this an exhaustive list of the matters that may be considered by the Secretary for this purpose.

In deciding whether to revoke a determination of this kind, the Secretary must consider:

- (a) whether the person continues to meet the criteria in subsection 8(1);
- (b) whether remaining subject to the enhanced IM regime will place the person’s mental, physical or emotional wellbeing at risk, including that the person:
 - (i) is not able to meaningfully engage in the enhanced IM process due to mental health issues; or
 - (ii) does not have the capacity to comprehend the operation of enhanced IM; or
 - (iii) is experiencing serious instability in the person’s housing or living situation and enhanced IM will affect the person’s ability to direct funds to housing;
- (c) whether the person is undertaking full-time study (which is defined term in the Act) or is an apprentice;
- (d) whether within at least 4 of the last 6 fortnights, the person has received less than 25% (other than because a compliance penalty period applied to the person) of:
 - (i) the maximum basic rate of youth allowance or disability support pension or the maximum fortnightly rate of a payment made under the ABSTUDY Scheme; or
 - (ii) the equivalent rate of special benefit (which is a defined term in the Act and the Determination); or

- (iii) if the person has received crisis payment—the maximum basic rate of the social security pension or social security benefit payable to the person under section 1061JU of the Social Security Act;
- (e) if the person has been determined to be a vulnerable welfare payment recipient because of subsection 8(1) of the Determination, for a period or periods totalling at least 12 months—whether the person:
 - (i) has successfully engaged in a supportive relationship that provided mentoring, coaching or case management that included a transition to independence and is likely to continue doing so such that they do not need to remain subject to the enhanced IM regime; or
 - (ii) has demonstrated the skills and ability to manage their money and to live independently and is likely to continue doing so such that the person does not need to remain subject to the enhanced IM regime.

Part 3—Disengaged youth and long term welfare payment recipients

Division 1—Exempt welfare payment recipients—specified class of persons

Section 9 specifies classes of persons the Secretary may determine to be exempt welfare payment recipients under section 123SDB of the Act. The classes of person specified in section 9 of the Determination are persons who:

- (a) are aged 16 or over and
- (b) are receiving special benefit and
- (c) are not a nominated visa holder and
- (d) are not the principal carer of a child who is aged under 6.

Exempt welfare recipients cannot be subject to enhanced IM.

Division 2—Exempt welfare payment recipients—specified activities

Section 10 relates to subparagraph 123SDD(1)(b)(iv) of the Act, which provides that the Secretary may determine that a person is an exempt welfare payment recipient if, among other things, the Secretary is satisfied that each school age child for which the person is the principal carer is participating in an activity specified in an instrument made by the Minister under subsection (2).

This section provides that the relevant specified activity, for a school age child who has a terminal condition, is a program of treatment for the terminal condition, provided by one or more treating health professionals.

Section 11 relates to paragraph 123SDD(1)(c) of the Act, which provides that the Secretary may determine that a person is an exempt welfare payment recipient if, among other things, the Secretary is satisfied that in relation to any other child (that is a non-school age child) for which the person is the principal carer, either the person or the child is participating in the required number and kind of activities specified in an instrument made by the Minister under subsection (3).

In accordance with subsection 11(1) the specified number and kind of activities for a child other than a school age child depend on the child's age and circumstances. The activities are defined with reference to subsections 11(3) and (4), which outline kinds of activities described as health related activities and engagement related activities respectively. The number and kind of activities specified in subsection 11(1) are:

- for a child who is aged under 3 — 2 health related activities;
- for a child who is aged 3 or over but under 4 and, as a result of a severe disability or severe medical issue, is unable to participate in any engagement related activities — 3 health related activities;
- for any other child who is aged 3 or over but under 4—2 health related activities and 1 engagement related activity;
- for a child who is aged 4 or over and attending pre-school or kindergarten—2 health related activities;
- for a child who is aged 4 or over, not attending pre-school or kindergarten and, as a result of a severe disability or severe medical issue, is unable to participate in any engagement related activities — 3 health related activities;
- or
- for any other child who is aged 4 or over and not attending pre-school or kindergarten —2 health related activities and 2 engagement related activities.

Subsection 11(2) provides an exception to subsection 11(1) for a child who has a terminal condition. In that circumstance, the specified number and kind of activities for the child is one activity that is a program of treatment for the terminal condition, provided by one or more treating health professionals.

In accordance with subsection 11(3), the kind of activities that are health-related activities are the following:

- (a) an activity to meet the immunisation requirements (within the meaning of the *A New Tax System (Family Assistance) Act 1999*) for the child;
- (b) a program of regular health and development assessments for the child;
- (c) a program of treatment for the child, provided by one or more treating health professionals.

In accordance with subsection 11(4), the kind of activities that are engagement-related activities are the following:

- (a) an activity of attending, for at least 8 hours per week, an approved child care service;
- (b) an activity of attending playgroup (whether formally facilitated or otherwise);
- (c) an activity of attending creche;
- (d) an activity of attending Kindergym;
- (e) an activity of attending primary school;
- (f) any other age appropriate activity that is designed to promote the child's social, emotional, mental or physical development.

Division 3—Exempt welfare payment recipients—decision-making principles for financial vulnerability

Section 12 outlines the decision-making principles relevant to paragraph 123SDD(1)(d), which provides that the Secretary may determine that a person is an exempt welfare payment recipient if, among other things, the Secretary is satisfied that there were no indications of financial vulnerability in relation to the person during the last 12 month period.

Subsection 12(1) states that this section provides the decision-making principles for the purpose of subsection 123SDD(5) of the Act.

Subsection 12(2) requires that the Secretary consider whether the person experienced financial exploitation during the relevant 12 month period.

Subsection 12(3) requires the Secretary to consider:

- (a) the person's relevant priority needs during the 12 month period; and
- (b) whether the person, during the 12 month period, was applying appropriate resources to meet some or all of those needs.

Subsection 12(4) requires the Secretary to consider:

- (a) what, if any, strategies (however described) the person used, during the 12 month period, to manage the person's financial resources; and
- (b) whether it is likely that the person will continue to use those strategies, or similar strategies, to manage the person's financial resources in the foreseeable future.

A note to subsection 12(4) provides examples of strategies for this purpose, including: a personal or household budget, a financial plan, paying bills or other expenses through Centrepay or by direct debit from a bank account, arranging to pay major bills or debts by instalments, undertaking a course to learn or update financial skills, using lay by services and using a SmartCard as part of the enhanced IM regime under Part 3AA of the Act.

Subsection 12(5) requires the Secretary to consider:

- (a) whether the person received more than one payment in relation to their social security entitlement in any fortnight during the 12 month period, and the reasons for each of those payments; and
- (b) if the person requested to be paid more than one payment in a fortnight during that 12 month period and that request was rejected—the reasons for the rejection.

Subsection 12(6) requires the Secretary to consider how many times (if any) the person requested that their usual payday be changed during the 12 month period, and the reasons for each request.

Part 4 – repeal

Section 13 provides that this instrument is repealed at the start of 1 July 2026. This is consistent with the Government’s commitment to continue consultation on the future 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) (Enhanced Income Management Regime—Commonwealth Referrals and Exemptions) 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—Commonwealth Referrals and Exemptions) 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.

The effect of the Determination enables the operation of the vulnerable welfare payment recipient, disengaged youth and long-term welfare payment recipient measures under the enhanced IM regime (sections 123SCL, 123SD and 123SDA of the Act respectively). The Determination specifies:

- locations in which eligible individuals must reside (where applicable); and
- decision-making principles the Secretary must comply with when determining whether a person is:
 - a vulnerable welfare payment recipient for the purpose of section 123SCL of the Act
 - an exempt welfare payment recipient under sections 123SDB and 123SDD of the Act.

Objectives

The objective of this Determination is to provide mechanism to commence and operate enhanced IM under the disengaged youth, long-term welfare payment recipient and vulnerable welfare payment recipient measures 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 Act is insufficient to meet the needs of communities.

Human rights implications

The determination engages the following rights or freedoms:

- 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 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). In particular, article 5 of the 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)).

This Determination does not directly limit an individual's right to equality and non-discrimination. It ensures that individuals who choose to transfer to the enhanced IM regime, and those that become subject to it by virtue of their particular circumstances, are not identified based on race, colour, nationality, sex or gender. Rather, all individuals who become subject to the enhanced IM regime under this Determination do so on the basis of their individual circumstances, including their usual place of residence where relevant.

This Determination does specify some of the locations in which the enhanced IM program will operate and, as has been observed with the abolished Cashless Debit Card program and the IM regime, individuals who become subject to the enhanced IM regime may include a high proportion of First Nations people. Extensive consultation has occurred with First Nations people and communities in the establishment of the enhanced IM program, including on the locations in which it operates. This Determination does not expand the footprint of the IM regime, rather responds to reported needs of communities. Any impact on the right to equality and non-discrimination is considered to be reasonable and proportionate.

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'*.

This Determination does not limit or interfere with the right to self-determination or a person's right to freely pursue their economic, social or cultural development. Individuals subject to enhanced IM under this Determination can continue to spend 50 per cent of their welfare payments on any goods or services when and how they choose while also ensuring that a portion of those payments is reserved for living expenses such as rent, food and other everyday bills such as utilities.

Whilst this does limit people's ability to freely dispose of their resources it does not impact on their right to freely pursue their economic, social or cultural development.

It also provides the opportunity for enhanced IM participants to engage in relevant activities to become exempt from the program, thus promoting the right to self-determination.

Any limitation on the right to self-determination 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 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 does not limit the right to an adequate standard of living. Persons subject to enhanced IM in the locations or measures enabled by this determination will have 50 per cent of their income support payments reserved to make any purchases that are not excluded goods, excluded services or cash-like products that can be used to purchase such goods and services. Excluded goods include alcohol, gambling products, pornography and tobacco and excluded services include gambling. By stopping individuals from spending a significant portion of their welfare payment to purchase these goods and services, the enhanced IM regime ensures individuals will have sufficient funds available to meet their basic needs such as rent, food and household bills. This will in turn promote improvement of living conditions, while also enabling individuals to spend the remaining portion of the welfare payment in an unrestricted manner, including participation in a cash economy if required.

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*'.

The right to social security is limited only to the extent that individuals subject to the enhanced IM program under the commonwealth measures may not use a portion of their payment to purchase excluded goods or excluded services. 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 ensures that individuals subject to enhanced IM under this measure have a portion of their welfare payments available 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 legislative instrument is compatible with human rights. It protects human rights by giving individuals by ensuring that welfare payments are spent in the best interests of welfare payment recipients and their dependents. To the extent this Determination may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of enhanced IM.

**[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.