**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Human Services

*Social Security (Administration) Act 1999*

*Social Security (Administration) (Trial Area — Ceduna and Surrounding Region) Amendment Determination (No.1) 2016*

**Purpose**

In accordance with subsection 124PG(1) of the Social Security (Administration) Act 1999 (the Act), this Amendment Determination amends the *Social Security (Administration) (Trial Area — Ceduna and Surrounding Region) Determination 2015* (the 2015 Determination) to narrow the class of person who are trial participants in relation to the Ceduna and Surrounding Region trial area.

**Background**

The debit card trial will test the concept of cashless welfare arrangements by disbursing particular welfare payments to a restricted bank account, accessed by a debit card which does not allow cash withdrawals. Trial participants and voluntary participants in the Ceduna and Surrounding region trial area will receive their welfare payments in this way.

It will not be appropriate for some persons to be trial participants, because their particular circumstances may make certain aspects of the cashless debit card impractical. Persons who live outside the trial area during term time for the purposes of completing their course of study may find it impractical to use a cashless debit card outside the trial area. For example, they will not have access to the same support services as trial participants who live within the trial area. Such students will not be within the class of trial participants.

Age pension recipients will not be trial participants unless they volunteer to be subject to the trial. Age pension is not a trigger payment for the trial (under the definition of ‘trigger payment’ in section 124PD of the Act). Persons nearing pension age, such that they will generally be transferred from their current welfare payment to age pension during the proposed course of the trial (12 months from 15 March 2016) and would cease to be trial participants, will not be within the class of trial participants.

Some welfare recipients are subject to income management under Part 3B of the Act. Persons whose usual place of residence is in Ceduna or the surrounding region may be subject to income management under the child protection measure of income management (section 123UC of the Act). Such persons will not be trial participants while they remain subject to this measure of income management.

Similarly, a person who was formerly a resident of the Northern Territory may be subject to income management under the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC of the Act). Such persons may remain subject to income management for 13 weeks despite their usual place of residence ceasing to be within a specified income management area. Such persons who take up residence in the trial area will not be trial participants while they remain subject to income management.

Similarly, a person who was formerly a resident of Queensland may be subject to income management under the Queensland Family Responsibilities Commission measure of income management (section 123UF of the Act). If such a person relocates to the trial area, they will not be a trial participant while they remain subject to income management.

For some persons, being a trial participant may seriously risk the person’s mental, physical or emotional wellbeing. Where an officer of the Department of Social Services (delegate of the Secretary) is satisfied that being a trial participant is seriously risking a person’s mental, physical or emotional wellbeing, the officer may make an administrative decision resulting in that person no longer falling within the class of persons who are trial participants. Officers do not need to conduct an investigation into the mental, physical or emotional wellbeing of every prospective trial participant or trial participant. It is only where officers are made aware of specific facts which indicate that an individual’s trial participation may seriously risk that person’s mental, physical or emotional wellbeing that they need to consider making the administrative decision resulting in that person no longer falling within the class of persons who are trial participants.

Officers will consider making this determination once they are made aware of facts which indicate that being a trial participant may seriously risk a person’s mental, physical or emotional wellbeing. Where an officer is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing at the beginning of the trial and makes a determination to this effect, the person will not be a trial participant from the commencement of the trial while that condition is met. If the serious risk to the person is only brought to an officer’s attention during the course of the trial, the determination may be made, resulting in the person not being a trial participant while that condition is met.

The class of trial participants does not include persons whose welfare payment is paid to particular kinds of payment nominee, under current subparagraph 6(a)(i) of the 2015 Determination, and the definition of Part 3D payment nominee in section 4 of that Determination. Currently, this provision includes persons with a social security or family assistance payment nominee, or a person whose youth allowance payments are paid to their parent or guardian. Payments under the ABSTUDY scheme may be made to the recipient’s parent or guardian, or to another person on their behalf. The Amendment Determination expands the meaning of Part 3D payment nominee to include a person to whom another person’s payments under the ABSTUDY Scheme are to be paid in accordance with part 71.7 of the ABSTUDY policy manual.

The Minister for Human Services has been appointed to also administer the Department of Social Services, and so pursuant to section 19A of the Acts Interpretation Act 1901 has the powers of the ‘Minister’ under Part 3D of the Act.

Subsection 33(3) of the Acts Interpretation Act 1901 relevantly provides that where an Act confers a power to make any instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

The Amendment Determination is a legislative instrument.

**Commencement**

The Amendment Determination commences on the later of the day after it is registered on the Federal Register of Legislation and immediately after the commencement of the *Social Security (Administration) (Trial Area – Ceduna and Surrounding Region) Determination 2015*.

**Consultation**

The Government, including officials from the Department of Social Services and Department of the Prime Minister and Cabinet have undertaken comprehensive engagement with people in Ceduna and the surrounding regions.

On 4 August 2015, key leaders from Maralinga Tjuratja (Oak Valley), the Ceduna Aboriginal Corporation, Yalata Community Incorporated, Koonibba Aboriginal Community Corporation, Scotdesco Aboriginal Corporation and the District Council in Ceduna signed a Memorandum of Understanding with the Commonwealth Government to participate in the trial. This was after a long, positive consultation process with the community leaders, proposed trial participants and merchants.

Those consulted include potential trial participants, Aboriginal leaders, family violence service providers, family support services, education providers, health providers, rehabilitation service providers, police, local government, state government agencies, and the Department of Human Services local staff.  The consultation format has included one-on-one meetings and group roundtables.

Consultations have covered a number of issues including seeking advice from community members about the identification of local and cultural protocol and preferred entry points for community discussion. Topics of discussion included:

* key trial objectives;
* parameters (including percentages and trial boundaries);
* the anticipated benefits of the trial in terms of community safety/wellbeing for vulnerable people;
* the identification of gaps and possible support services;
* the role and formation of a community body;
* the evaluation; and
* differences between the trial and income management

Consultations continued in Ceduna after the tabling of the 2015 Determination and will extend through to implementation of the trial and beyond to ensure the community is prepared and has all necessary information and support for the trial. These recent consultations raised the need for certain exemptions to the debit card trial as contained in the Amendment Determination.

Future debit card trial participants have also clarified the desirability of these exemptions via ministerial correspondence and calls to the dedicated debit card trial hotline (run by the Department of Social Service). Further consultation with the Department of Premier and Cabinet and the Department of Human Services have informed the development of these exemptions.

**Regulation Impact Statement (RIS)**

This Determination is not regulatory in nature, will have minimal impact on business activity and will have no, or minimal, compliance costs or competition impact.

**Explanation of the provisions**

**Section 1** states the name of the Amendment Determination.

**Section 2** provides for commencement of the Amendment Determination. The instrument will be repealed on the day after its commencement by section 48A of the *Legislation Act 2003*, as the only effect of the instrument is to amend another legislative instrument.

**Section 3** provides that Schedule 1 amends the *Social Security (Administration) (Trial Area – Ceduna and Surrounding Region) Determination 2015*.

**Schedule 1** to the Amendment Determination sets out the amendments to the 2015 Determination.

**Item [3]** omits and substitutes the definition of **Part 3D payment nominee**, to include a new paragraph (c) referring to a person to whom another person’s payments under the scheme known as the ABSTUDY Scheme are to be paid in accordance with part 71.7 of the ABSTUDY policy manual. **Item [1]** includes a definition of the **ABSTUDY Scheme** by reference to the Social Security Act.

**Items [4] and [5]** set out the new conditions upon the class of persons who are trial participants, drawing upon new definitions inserted by **items [2] and [3]**.

**Item [4]** inserts 5 new subparagraphs after subparagraph 6(a)(ii) of the 2015 Determination.

**New subparagraph 6(a)(iii)** provides that the class of trial participants only includes persons who have not reached pension age and will not reach pension age during the 12 month period commencing 15 March 2016. A definition of **pension age** by reference to the Social Security Act, is inserted by **item [3].** Item 3 also inserts a definition of the **Social Security Act** meaning the *Social Security Act 1991*.

**New subparagraph 6(a)(iv)** provides that the class of trial participants only includes persons who are not subject to the income management regime under section 123UC (child protection) or 123UF (Queensland Family Responsibilities Commission) of the Act.

**New subparagraph 6(a)(v)** provides that the class of trial participants only includes persons who are not subject to the income management regime under section 123UCB (disengaged youth) or 123UCC (long-term welfare recipient) of the Act because subsection 123UCB(3) or subsection 123UCC(3) applies to the person. Those subsections provide that the person remains subject to income management for 13 weeks from the time the person’s usual place of residence ceased to be within a specified income management area.

**New subparagraph 6(a)(vi)** provides that the class of trial participants only includes persons who are not an outside trial area student. A definition of **outside trial area student** is inserted into section 4 by **item [2]**. Outside trial area student means a full-time student for the purposes of Part 3B of the Act; or a person receiving a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance; or a person receiving pensioner education supplement at a fortnightly rate provided for by subsection 1061PZG(2) of the Social Security Act; or a person who is receiving youth allowance as a new apprentice as defined in subsection 23(1) of the Social Security Act; or a person who is receiving an austudy payment; or a person who is receiving special benefit on the basis the person is:

(i) required by the Secretary to undertake a course under section 736 of the Social Security Act; or

(ii) engaged in a course undertaken under a Special Benefit Employment Pathway Plan;

who lives outside the trial area for the purposes of meeting study requirements.

**New subparagraph 6(a)(vii)** provides that the class of trial participants includes persons who are not the subject of a determination by the Secretary under section 7 of the 2015 Determination.

**Item [5]** inserts new **section 7**. Subsection 7(1) provides that the Secretary may determine that a person, who would otherwise be in a class of persons determined in section 6, is not in a class of person for the purposes of subsection 124PG(1) of the Act if the Secretary is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing. This section does not delegate to the Secretary the decision as to the class of persons who are trial participants. It empowers the Secretary (or their delegate) to make an administrative decision in relation to an individual person that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing, which means that the person is not within the prescribed class of trial participants. This is a factual assessment of the person’s circumstances. If such determination is made, the person will no longer be within the class of trial participants determined by the Minister in the 2015 Determination, and no longer subject to the trial.

Subsection 7(2) is an avoidance of doubt provision. It provides that the Secretary is not required to consider whether to make a decision under section 7 prior to a person becoming a trial participant. In practice, the Secretary will consider making a decision under this section only where a delegate of the Secretary becomes aware of facts which indicate that being a trial participant may seriously risk a person's mental, physical or emotional wellbeing. If, after gathering relevant evidence, the delegate becomes satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing, a determination to this effect may be made.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the*

*Human Rights (Parliamentary Scrutiny) Act 2011*

**SOCIAL SECURITY (ADMINISTRATION) (TRIAL AREA – CEDUNA AND SURROUNDING REGION) AMENDMENT DETERMINATION (No. 1) 2016**

This Amendment 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 Amendment Determination provides for several exemptions from the trial.

*Studying outside the trial region*

Persons who live outside the trial area during term time for the purposes of completing their course of study will not be within the class of trial participants.

*Pension age*

Those of pension age or those persons nearing pension age, such that they will generally be transferred from their current welfare payment to age pension during the proposed course of the trial (12 months from 15 March 2016) and would cease to be trial participants, will not be within the class of trial participants.

*Subject to income management measures*

Persons who are subject to certain income management measures will not be trial participants while they remain subject to these income management measures.

Some welfare recipients are subject to income management under Part 3B of the Act. Persons whose usual place of residence is in Ceduna or the surrounding region may be subject to income management under the child protection measure of income management (section 123UC of the Act). Such persons will not be trial participants while they remain subject to this measure of income management.

Similarly, a person who is formerly a resident of the Northern Territory may be subject to income management under the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC of the Act). Such persons may remain subject to income management for 13 weeks despite their usual place of residence ceasing to be within a specified income management area. Such persons who take up residence in the trial area will not be trial participants while they remain subject to income management.

Similarly, a person who is formerly a resident of Queensland may be subject to income management under the Queensland Family Responsibilities Commission measure of income management (section 123UF of the Act). If such a person relocates to the trial area, they will not be a trial participant while they remain subject to income management.

Wellbeing at risk

For some persons, being a trial participant may seriously risk the person’s mental, physical or emotional wellbeing. Where an officer of the Department of Social Services (delegate of the Secretary) is satisfied that being a trial participant is seriously risking a person’s mental, physical or emotional wellbeing, the officer may make an administrative decision resulting in that person no longer falling within the class of persons who are trial participants. Officers of the Department of Social Services are not required to actively take steps to assess every trial participant’s individual circumstances to decide whether being a trial participant would seriously risk that person's mental, physical or emotional wellbeing. Officers of the Department of Social Services will consider making this determination if they are made aware of facts which indicate that being a trial participant may seriously risk a person’s mental, physical or emotional wellbeing. Where an officer is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing at the beginning of the trial and makes a determination to this effect, the person will not be a trial participant from the commencement of the trial. If the serious risk to the person is only brought to an officer’s attention during the course of the trial, the determination may be made, resulting in the person not being a trial participant for the remaining part of the trial.

Payment nominees

The class of trial participants does not include persons whose welfare payment is paid to particular kinds of payment nominee, under current subparagraph 6(a)(i) of the 2015 Determination, and the definition of Part 3D payment nominee in section 4. Currently, this provision includes persons with a social security or family assistance payment nominee, or a person whose youth allowance payments are paid to their parent or guardian. Payments under the ABSTUDY scheme may be made to the recipient’s parent or guardian, or to another person on their behalf. The Amendment Determination expands the meaning of Part 3D payment nominee to include a person to whom another person’s payments under the ABSTUDY Scheme are to be paid in accordance with part 71.7 of the ABSTUDY policy manual.

***Human rights implications***

This Determination only engages the applicable rights or freedoms to the extent it recognises and promotes these appropriate rights or freedoms.

The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (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 form of education’.

All of the amendments contained in the Amendment Determination recognise and promote this right as they are all designed to ensure individuals, who could not fully participate in the trial due to location, the fact they are subject to income management measures, are nearing pension age, or have payment nominees, receive social security in the routine manner and are not subject to any restrictions on how they spend their social security payments.

***Conclusion***

This Determination is compatible with human rights as it does not raise any human rights issues.

**[Circulated by the authority of the Minister for Human Services, the Hon Alan Tudge MP]**