

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*Social Security (Administration) Act 1999*

*Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023*

### **Purpose**

The *Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023 (Instrument)* determines New South Wales, Queensland, South Australia and Victoria as declared child protection States for the purposes of Part 3B of the *Social Security (Administration) Act 1999 (Administration Act)*.

This Instrument repeals and replaces the *Social Security (Administration) (Declared child protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2012 (2012 instrument)* which will sunset on 1 October 2023 unless repealed earlier.

### **Background**

#### *Income management regime*

Part 3B of the Administration Act contains provisions for the income management regime for recipients of certain welfare payments. A person who is subject to the income management regime will have amounts deducted from the person's welfare payments and credited to the person's income management account. The Secretary may debit amounts from the person's income management account to meet the priority needs of the person and the person's children, partner or dependants. The priority needs of a person are defined under subsection 123TH(1) of the Administration Act and include food, clothing, housing, household utilities and health.

The *Social Security (Administration) Amendment (Income Management Reform) Act 2023 (IM Reform Act)*, closed entry to the income management regime (see Schedule 2 to the IM Reform Act) for new entrants. A person cannot be subject to the regime unless the person was subject to the regime immediately before commencement of the Act or chooses to move to the enhanced income management regime. The income management regime will continue to operate in its current form for those persons who do not choose to move to the enhanced regime.

## *Child protection*

Section 123TF of the Administration Act provides that the Minister may determine that a specified State or Territory is a declared child protection State or Territory for the purposes of Part 3B of the Act. This Instrument provides that New South Wales, Queensland, South Australia and Victoria are declared child protection States.

Section 123UC of the Administration Act provides for when a person may be subject to the income management regime under the child protection measure.

Under the IM Reform Act, entrance to the income management regime closed on 4 September 2023 (see new subsection 123UC(3) of the IM Reform Act at Schedule 2, item 1 and page 61 of the Explanatory Memorandum to the Social Security (Administration) Amendment (Income Management Reform) Bill 2023 (**IM Reform Bill**)). Persons subject to the income management regime under the child protection measure before 4 September 2023 will continue to be subject to the income management regime, unless they opt to transfer to the enhanced income management regime.

Before 4 September 2023, a person will be subject to the income management regime under subsection 123UC(1) if, at a particular time (the **test time**), the person meets the following requirements:

- The person, or person's partner, is an eligible recipient of a category H welfare payment. A person is an eligible recipient from the start day of the relevant payment until the relevant payment is cancelled (section 123TK of the Administration Act). Category H welfare payments are defined in section 123TC of the Administration Act.
- A child protection officer of a State or Territory gave the Secretary a written notice requiring that the person be subject to the income management regime under this section before the test time.
- The notice was given under a law in force in a State or Territory, or in the exercise of the executive power of a State or Territory.
- The notice had not been withdrawn or revoked.
- The State or Territory which issued the notice to the Secretary is a declared child protection State or Territory. This Instrument declares that New South Wales, Queensland, South Australia and Victoria are declared child protection States.
- If the person has a Part 3B payment nominee, the Part 3B payment nominee is not an excluded Part 3B payment nominee. A Part 3B payment nominee includes a person who is the payment nominee of another person, a person to whom payment of another person's service pension or veteran payment is

made and a person to whom another person's instalments of youth allowance are to be paid (section 123TC of the Administration Act)

- The person is not subject to the income management regime under section 123UF. Section 123UF provides for when a person may be subject to the income management regime under the Queensland Commission measure.

### *Repeal*

This Instrument will self-repeal at the start of 1 July 2026.

This Instrument also repeals the 2012 instrument which would otherwise sunset on 1 October 2023. This Instrument is in substantially the same terms as, and will replace, the 2012 instrument on its repeal.

### *Authority*

This Instrument is made under section 123TF of the Administration Act. Section 123TF makes provision for a specified State or Territory to be a declared child protection State or Territory.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This Instrument is disallowable.

### *Information sharing*

Information about a person that is collected by an officer in relation to the income management regime will have the character of protected information where information is being obtained for the purposes of the social security law. This includes information about persons who are subject to income management under the declared child protection State or Territory measure.

Division 7 of Part 3B of the Act allows for the disclosure of information in relation to persons subject to the income management regime in limited circumstances.

Apart from these specific provisions, the Act has further protections in place that limit the way in which protected information is handled. Under Division 3 of Part 5 of the Act, a person will be authorised to record, disclose or use protected information, for example, where this is for the purposes of the social security law or family assistance law, with consent or in accordance with a public interest certificate. If the recording, disclosure or use of protected information is not authorised under the Act and the

person knows or ought reasonably to know that the information is protected information, the person may commit an offence which is punishable on conviction by imprisonment for a term not exceeding two years.

### *Availability of independent review*

Under subsection 23(17) of the *Social Security Act 1991*, legislative instruments made under the Administration Act form part of the social security law. Decisions made under social security law are subject to internal and external merits review under Parts 4 and 4A of the Administration Act.

### **Commencement**

This Instrument commences on the day after it is registered on the Federal Register of Legislation.

### **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 *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* and the introduction of the IM Reform Act. Together, these Acts give effect to the Government's election commitments to abolish the CDC program and reform income management.

This instrument supports the IM Reform Act by ensuring legislative support for continued operation of the income management regime for individuals who choose to remain subject to it, rather than move to the enhanced income management regime, as the future of the programs is refined by the Government through ongoing consultation with stakeholders, merchants, community members and participants.

### **Impact Analysis**

An Impact Analysis (IA) was prepared and is titled *Reforming the Cashless Debit Card and Income Management*. The IA was published on 28 October 2022 and 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**

**Section 1** states that the name of the Instrument is the *Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023*.

**Section 2** specifies that the Instrument commences on the day after it is registered on the Federal Register for Legislation.

**Section 3** provides that the Instrument is made under section 123TF of the Administration Act.

**Section 4** provides that this instrument is repealed at the start of 1 July 2026. This date is consistent with the Government's commitment to continue consultation on the future of income management.

**Section 5** lists the definitions of the terms used in the Instrument.

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

**Section 6** provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

**Section 7** provides that New South Wales, Queensland, South Australia and Victoria are declared child protection States for the purposes of Part 3B of the Administration Act. This means that a person may be subject to the income management regime if a child protection officer of New South Wales, Queensland, South Australia or Victoria gives the Secretary a written notice requiring the person be subject to the regime, if the person meets all other requirements under subsection 123UC(1).

**Schedule 1** provides that this Instrument repeals the whole of the *Social Security (Administration) (Declared child protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2012*.

## Impact Analysis Executive Summary (published on 28 October 2022)

Currently, there are 2 programs in operation that restrict what people can purchase with their welfare payments. These programs are income management regime 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 the income management regime 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 income management.

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 the income management regime 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 income management 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.



## Statement of Compatibility with Human Rights

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

### ***Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023***

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

#### **Overview of the legislative instrument**

The Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023 (**Instrument**) determines New South Wales, Queensland, South Australia and Victoria as declared child protection States for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (**Administration Act**).

Section 123TF of the Administration Act provides that the Minister may determine that a specified State or Territory is a declared child protection State of Territory for the purposes of Part 3B of the Act.

Part 3B of the Administration Act contains provisions for the income management regime for recipients of certain welfare payments. A person who is subject to the income management regime will have amounts deducted from the person's welfare payments and credited to the person's income management account. The Secretary may debit amounts from the person's income management account to meet the priority needs of the person and the person's children, partner or dependants. The priority needs of a person are defined under subsection 123TH(1) of the Administration Act and include food, clothing, housing, household utilities and health.

Section 123UC of the Administration Act provides for when a person may be subject to the income management regime under the child protection measure.

#### **Human rights implications**

This Instrument engages the following rights and responsibilities in ensuring the continued operation of the income management regime:

- Right to social security
- Right to adequate standard of living

- Right to self-determination
- Right to life
- States should take into account the best interest of the child
- States should render assistance to parents and legal guardians
- States should take appropriate measures to protect child from neglect

### *The right to social security*

Article 9 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) provides that States recognise the right of everyone to social security, including social insurance. Enjoyment of the right to social security requires that social support schemes are easily accessible and available to people in need. Benefits payable under the scheme must be adequate to provide appropriate levels of standard of living and health care. This requires a country to, within its maximum available resources, 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.

People subject to income management under the child protection measure retain the same right to social security, while being provided a mechanism to acquire the essential items encompassed under article 9 of the ICESCR. The requirement to allocate a percentage of their welfare payments to meet their priority needs, such as food, clothing, housing and household utilities, supports this right.

Article 26 of the Convention on the Rights of the Child (**CRC**) recognises the right of every child to benefit from social security, including social insurance, and provides that States should take necessary measures to achieve the full realisation of this right. The benefits should be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.

This Instrument promotes the right of the child to social security under article 26 of the CRC by ensuring that certain amounts of welfare payments are allocated for meeting the priority needs of the child. The income management regime promotes this right by taking into account the circumstances of the child, and persons having responsibility for the child, and by providing assistance to those persons to ensure that certain amounts of welfare payments benefit the child and are spent on housing, food, clothing and education.

### *The right to adequate standard of living*

Article 11 of ICESCR provides that everyone has the right to an adequate standard of living, including adequate food, clothing and housing.

This Instrument promotes the right to an adequate standard of living by ensuring that certain amounts of a person's welfare payments are directed towards meeting the priority needs of a person and their dependants, which include food, clothing and housing.

Article 27 of the CRC recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. States should take appropriate measures to assist parents and others responsible for the child to implement this right and should provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

This Instrument supports this right as it provides for the income management regime, which is designed to provide assistance to parents and legal guardians to meet the priority needs of the child, including food, clothing and housing. Where a child protection officer has assessed that a child may be at risk, the child's parents or legal guardians may be subject to the income management regime to ensure that the child's priority needs are met and the child has access to an adequate standard of living. This Instrument promotes the protection and development of the child and support's Australia international obligations under the CRC.

### *The right to self-determination*

Article 1 of the International Covenant on Civil and Political Rights (**ICCPR**) and article 1 of the ICESCR provide that all peoples have the right to self-determination and, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

This Instrument does not impact a person's ability to freely determine their political status. The income management regime does not impact a person's pursuit of their economic, social and cultural development as the welfare recipient still receives the benefit of the entire amount of the welfare payment. Spending restrictions are placed on certain amounts of the welfare payment which does limit the person's ability to freely dispose of their resources. However, these restrictions are reasonable, necessary and proportionate as they provide financial stability to the welfare recipient and family and support the development and protection of children.

### *The right to life*

Article 6 of the CRC provides that States should recognise that every child has the inherent right to life and should ensure to the maximum extent possible the survival and development of the child.

This Instrument promotes this right by ensuring that a child's parent or legal guardian be subject to the income management regime where a State child protection officer has assessed that a child may be at risk. This ensures that certain amounts of the parent or legal guardian's welfare payment will be allocated to meet the priority needs of the child, contributing to the child's survival and enhanced development.

*States should take into account the best interest of the child*

Article 3 on the CRC provides that in all actions concerning children, whether undertaken by public institutions, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. States should take all appropriate legislative and administrative measures to ensure the child protection and care that is necessary for their well-being, taking into account the rights and duties of the child's parents or legal guardians.

This Instrument promotes the best interests of the child as it takes appropriate measures to ensure the care and protection of children by allocating certain amounts of some welfare recipient's payments to meet the priority needs of the payment recipient and their dependants. The income management regime is an appropriate measure for protecting the best interest of the child.

*States should render assistance to parents and legal guardians*

Article 18 of the CRC provides that States should ensure recognition of the principle that parents or legal guardians have the primary responsibility for the upbringing and development of the child. For the purpose of guaranteeing and promoting the rights set forth in the CRC, States should render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.

This Instrument is in line with Article 18 of the CRC as it provides appropriate assistance to parents and legal guardians to ensure that the priority needs of the children are met. This recognises that the parents and legal guardians have the primary responsibility for the upbringing of the child but provides for measures where the State can assist the parent or legal guardian to meet the needs of a child where a child protection officer assesses that a child may be at risk.

*States should take appropriate measures to protect child from neglect*

Article 19 of the CRC provides that States should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of neglect or negligent treatment while in the care of parents or legal guardian. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child.

This Instrument provides for the income management regime in cases where a child protection officer has assessed that children may be at risk. This is an appropriate

protective measure that provides necessary support to parents and legal guardians to meet the priority needs of children within their care. This Instrument protects children from neglect or negligent treatment by ensuring that amounts from parent's or legal guardian's welfare payments are allocated to meet the priority needs of the child, such as education, food, housing and clothing.

#### *The limitation of rights under the ICESCR*

Article 4 of the ICESCR provides that States may limit rights under the ICESCR only in so far as the limitations may be compatible with the nature of these rights, and solely for the purpose of promoting the general welfare in a democratic society.

As noted above, this Instrument does not unreasonably limit a person's rights under the ICESCR. Although the income management regime does restrict the spending of a welfare recipient's payments, these restrictions are consistent with the nature of the rights which are being limited and the restrictions have the purpose of promoting the general welfare of children and society.

#### **Conclusion**

This Instrument is compatible with Australia's human rights obligations because it promotes and protects the rights outlined above, especially the rights of the child. The child protection measure under the income management regime promote the protection of human rights and development of the child by ensuring that welfare payments are spent in the best interests of children. The income management regime is an appropriate measure that assists parents and legal guardians with meeting the priority needs of the child, including food, education, health, clothing and housing. To the extent that this Instrument may limit human rights, by limiting the person's ability to freely dispose of their resources, these limitations are reasonable, necessary and appropriate to achieve the legitimate objective of promoting and protecting the health and development of children.

**The Hon Amanda Rishworth MP, Minister for Social Services**