**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

***Social Security (Administration) Act 1999***

***Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025***

**Purpose**

The *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025* (the Rules) prescribe circumstances in which certain amounts, determined in accordance with the Rules, are to be credited to the Income Management Record and a person’s notional income management account (income management account), for the purposes of the income management regime in Part 3B of the *Social Security (Administration) Act 1999* (the Administration Act). The circumstances specified in these Rules all relate to debits that are made from the Income Management Record and a person’s income management account for the purpose of giving a BasicsCard to the person, or increasing the monetary value stored on a BasicsCard held by the person.

The Rules are made under section 123WN of the Administration Act.

**Background**

*Income management regime*

Part 3B of the Administration Act establishes the income management regime, that applies to recipients of certain welfare payments. The income management regime operates to reduce instances of welfare payments being spent on products and services that contribute to social harm.

If a person is subject to income management under Part 3B, the Secretary will deduct amounts from the person’s relevant welfare payments and credit those amounts to the person’s income management account. The Secretary may then debit amounts from the person’s income management account in accordance with Part 3B, for the purpose of taking actions directed to meeting the priority needs of the person and their dependants. Priority needs include food, clothing and housing, and do not include goods or services which are ‘excluded’ (see sections 123TH and 123TI of the Administration Act).

Division 5 of Part 3B of the Administration Act prescribes the framework for deducting the regulated portion from an income management participant’s welfare payment, as well as crediting the amount to the person’s notional income management account and the Income Management Record.

Each participant’s income management account is kept within the Income Management Record (formerly prescribed as the ‘special account’). The Income Management Record is established by section 123VA of the Administration Act, and acts as a single point of reference for reporting on and referencing the collective balances of all the separate income management accounts. Section 123WA of the Administration Act stipulates that those separate notional accounts are to be kept within the Income Management Record in the names of particular participants.

Once an amount is credited to a participant’s income management account and the Income Management Record, the Secretary may, for example, issue a voucher or a stored value card (known and referred to in this Explanatory Statement as a BasicsCard) to the participant, or increase the monetary value stored on a BasicsCard held by a participant (see sections 123YC and 123YE of the Administration Act), in accordance with Division 6 of Part 3B. This enables amounts regulated under the income management regime to be available to the participant to meet priority needs. For example, participants can make purchases from their income management account for priority needs by using a BasicsCard. In these circumstances, the participant’s notional account and the Income Management Record are debited by an amount equal to the amount made available to the participant under the income management regime.

*The Rules*

Section 123WN of the Administration Act prescribes that the Minister may make rules, by legislative instrument, providing for determining certain amounts, and crediting such amounts to the Income Management Record and a person’s income management account in specified circumstances. The Rules are made for this purpose and specify the circumstances in which certain amounts are to be credited to those accounts.

More specifically, the Rules provide for the crediting of the Income Management Record and a person’s income management account in circumstances where there is a debit from these accounts for the purpose of issuing the person with a BasicsCard, or increasing the monetary value of a BasicsCard already held by the person, under section 123YE or 123YF of the Administration Act.

Importantly, the Rules provide ancillary circumstances in which this crediting may occur. That is, the certain circumstances in which the Rules provide for crediting of the Income Management Record and a person’s income management account are additional to those prescribed under the Administration Act as part of the general operation of the income management regime.

The Rules repeal and remake the *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015* (2015 Rules)*,* which are due to sunset on 1 October 2025, in substantively the same terms.

**Commencement**

The Rules commence on the day after they are registered on the Federal Register of Legislation.

**Authority**

The Rules are made under section 123WN of the Administration Act.

Section 123WN of the Administration Act provides that rules made under section 123WN are a legislative instrument. The Rules are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to disallowance.

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 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. In making the Rules, the Minister is relying on this subsection in conjunction with the instrument-making power in section 123WN of the Administration Act.

**Consultation**

The Department of Social Services consulted with Services Australia on the text of the Rules, given the impact on income management participants. Services Australia supported these Rules.

The Department of Social Services did not consult with income management participants on the intention to make the Rules, as they are beneficial in nature and provide for the crediting of monetary amounts to a person’s income management account in prescribed circumstances. The Rules are made in substantively the same terms and serve the same purpose as the 2015 Rules.

### Availability of review

Decisions made under the social security law in relation to income management are generally subject to internal and external merits review under Parts 4 and 4A of the Administration Act.  Such decisions will include crediting a person’s income management account pursuant to the Rules.

**Explanation of the provisions**

**Details of the *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025***

 **Section 1 - Name**

Section 1 states how the Rules are to be cited, that is, as the *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025*.

**Section 2 – Commencement**

Section 2 sets out a table providing for the commencement of the Rules on the day after the Rules are registered on the Federal Register of Legislation.

**Section 3 – Authority**

Section 3 provides that the Rules are made under section 123WN of the Administration Act.

**Section 4 – Definitions**

Section 4 provides definitions used in the Rules.

**Section 5 – Schedules**

Section 5 provides that each instrument that is specified in a Schedule to the Rules is amended or repealed as set out in the applicable items in that Schedule, and any other items in a Schedule to the Rules has effect according to its terms.

Schedule 1to the Rules repeals the *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015*.

**Section 6 – Crediting the Income Management Record and a person’s income management account**

Section 6 provides the circumstances in which the Income Management Record and the income management account of an income management participant (an ‘affected person’) are to be credited with certain monetary amounts and how those amounts are to be ascertained. Both of these accounts are to be credited in accordance with this provision.

There are two requirements set out in subsection 6(2) that must be met in order for an amount to be credited to the Income Management Record and a person’s income management account under these Rules. Subsection 6(2) provides that the circumstances for the purposes of section 6 are:

1. the threshold circumstance prescribed in subsection 6(3); and
2. any of the particular circumstances mentioned in an item of the table in subsection 6(6).

This means that, if the threshold circumstances are met together with any of the circumstances detailed in an item in the table in subsection 6(6), then an amount worked out under subsection 6(5) is to be credited to the Income Management Record and the affected person’s income management account.

*Threshold circumstances*

The first requirement is that the threshold circumstance, set out in subsection 6(3), must be satisfied.

Subsection 6(3) provides that the threshold circumstance referred to in paragraph 6(2)(a) of the Rules is that the Income Management Record and the affected person’s income management account have been debited by an amount for the purposes of providing a BasicsCard to a person or their Part 3B payment nominee (under paragraph 123YE(2)(a) or 123YF(2)(a) of the Administration Act), or increasing the monetary value stored on a BasicsCard held by the person or their Part 3B payment nominee (under paragraph 123YE(2)(c) or 123YF(2)(c) of the Administration Act).

Subsection 6(4) prescribes the amounts that may contribute to the debited amount for the purposes of subsection 6(3). Such a debited amount may be in the form of a single transaction or made through a series of transactions.

*Particular circumstances*

The second requirement is that one of the particular circumstances set out in the table in subsection 6(6) must be satisfied.

The table in subsection 6(6) outlines the particular circumstances that are relevant for paragraph 6(2)(b) of the Rules. The table also sets out the amount that is relevant for the purpose of paragraph 6(5)(a) of the Rules.

Subsection 6(5) provides how to work out the amount that is to be credited to the Income Management Record and an affected person’s income management account if one of the particular circumstances in the table in subsection 6(6) occurs and subsection 6(2) is satisfied. Paragraphs 6(5)(a)-(c) of the Rules prescribe that the crediting amount is:

1. the amount shown in the applicable item in the table in subsection 6(2); or
2. if the monetary value stored on the BasicsCard is a lesser amount than the applicable table item – the lesser amount; or
3. if no monetary value is stored on the BasicsCard – a nil amount.

The table in subsection 6(6) sets out the particular circumstances which, if met, would satisfy the requirements in paragraph 6(2)(b) of the Rules discussed above. Where paragraph 6(5)(a) or (b) applies to work out the relevant crediting amount, the prescribed circumstances may be found in column 2 of the table, with the associated crediting amount prescribed in column 3 of the item line.

Item 1 – The particular circumstance in item 1 of the table in subsection 6(6) is where a person or their Part 3B payment nominee asks the Secretary to reduce the monetary value stored on their stored value card. If the Secretary agrees to the request, the amount will no longer be available through the mechanism of the stored value card and should consequently be credited to the Income Management Record and the person’s income management account.

This circumstance may occur where an amount has been credited to a person’s stored value card, but the person or their Part 3B payment nominee has not used this amount to acquire goods or services. If the person or their Part 3B payment nominee requires the use of these funds to meet another priority need (for example, to pay a bill, or to meet funeral expenses) the Secretary may agree to the request and credit the amount to the Income Management Record and the person’s income management account.

The crediting amount, ascertained in accordance with subsection 6(5), for the particular circumstance in item 1 is: the amount of the requested reduction; or, if the monetary value on the stored value card is a lesser amount, the lesser amount; or, if there is no monetary value stored on the stored value card, a nil amount.

Item 2 – The particular circumstance in item 2 of the table in subsection 6(6) is where the monetary value stored on the stored value card exceeds $3,000.

There is an administrative limit on the amount that can be stored on a stored value card and this has been set at $3,000. The reason for this is to limit liability if there are unauthorised transactions made with the card.

The crediting amount, ascertained in accordance with subsection 6(5), for the particular circumstance in item 2 is: the monetary value on the stored value card that exceeds this limit; or another amount determined by the Secretary; or, if the monetary value on the stored value card is a lesser amount, the lesser amount.

Item 3 – The particular circumstance in item 3 of the table in subsection 6(6) is where monetary value has been stored on the stored value card, but the Secretary forms the view that the affected person is unable or unlikely to be able to use the stored value card to acquire goods and services.

This circumstance may occur if the person cannot use the stored value card because of circumstances beyond their control such as a faulty card, the unavailability of the EFTPOS system or the unavailability of the card payments system.

The crediting amount, ascertained in accordance with subsection 6(5), for the particular circumstance in item 3 is the monetary value that is stored on the card.

Item 4 – The particular circumstance in item 4 of the table in subsection 6(6) is if an error has been made in the amount debited from the Income Management Record and the person’s income management account and stored on the stored value card.

For example, if a person requests that $100 be made available through their stored value card for the purpose of acquiring goods and services, but an error resulted in $200 being debited from the Income Management Record and the person’s income management account, the excess $100 should be re-credited to the Income Management Record and the person’s income management account and will no longer be accessible through the stored value card.

The crediting amount ascertained in accordance with subsection 6(5), for the particular circumstance in item 4 is: an amount equal to the amount debited in error; or, if the monetary value on the stored value card is a lesser amount, the lesser amount.

Item 5 – The particular circumstance in item 5 of the table in subsection 6(6) is if a person dies and they have a stored value card with a monetary credit balance and applies whether or not the person is subject to the income management scheme at the time of their death.

In this circumstance, the amount stored on the stored value card should be returned to the Income Management Record and the person’s income management account and be available as part of the residual amount to be paid under section 123WL of the Administration Act to the legal personal representative of the person, or to another person ascertained in accordance with paragraph 123WL(3)(b) of the Administration Act.

The crediting amount, ascertained in accordance with subsection 6(5), for the particular circumstance in item 5 is the monetary value that is stored on the card.

Item 6 – The particular circumstance in item 6 of the table in subsection 6(6) is where the person ceases to be subject to the income management scheme (other than because the person has died) and there is a request made to the Secretary to cancel the stored value card.

This allows the amount that has been credited to the stored value card to be returned to the Income Management Record and the person’s income management account. This will be included in the credit balance of the person’s income management account and be available to be paid as determined by the Secretary under section 123WJ of the Administration Act.

The crediting amount, ascertained in accordance with subsection 6(5), for the particular circumstance in item 6 is: the monetary value that is stored on the card; or, if there is no monetary value stored on the stored value card, a nil amount.

**Schedule 1 – Repeals**

**Item 1** repeals the whole of the *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2015*.

The Rules remake this sunsetting instrument in substantively the same terms. It is not intended that there are any changes to the circumstances prescribed in the repealed instrument.

**Statement of Compatibility with Human Rights**

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

***Social Security (Administration) Act 1999***

***Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025***

The *Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025* (the Rules) are 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 Rules prescribe circumstances in which certain amounts, determined in accordance with the Rules, are to be credited to the Income Management Record and a person’s income management account, for the purposes of the income management regime in Part 3B of the *Social Security (Administration) Act 1999* (the Administration Act). The circumstances specified in these Rules all relate to debits that are made from the Income Management Record and a person’s income management account for the purpose of giving a BasicsCard to the person, or increasing the monetary value stored on a BasicsCard held by the person.

The Rules are made under section 123WN of the Administration Act.

**Human rights implications**

The Rules engage the following human rights:

* the rights to equality and non-discrimination;
* the right to self-determination;
* the right to social security; and
* the right to an adequate standard of living.

*The rights to equality and non-discrimination*

The rights to equality and non-discrimination are provided for in international human rights treaties to which Australia is a party, most relevantly the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination (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*’.

Discrimination is impermissible differential treatment, based on a prohibited ground for discrimination (such as race), among persons or groups that results in a person or a group being treated less favourably than others. However, the United Nations Human Rights Committee has recognised that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant.

Income management does not directly limit the rights of equality and non‑discrimination. The program is not applied on the basis of race or cultural factors. Rather, participation in the program is based on a set of objective criteria. Income management operates in a range of locations, which were chosen based on demonstrated levels of disadvantage indicated by a range of factors which are reasonable, objective and non-race based, such as the number of people receiving welfare payments and the length of time people have been receiving welfare payments.

While income management does not directly limit the rights to equality and non-discrimination, it may indirectly limit these rights. Across the national program, around 80 per cent of income management participants are Indigenous. However, measures such as income management, which restrict what welfare payments can be spent on, are aimed at achieving legitimate objectives and are not applied on the basis of race or cultural factors, as outlined above.

To the extent that income management measures may disproportionately affect Indigenous people, any such limitation is reasonable and proportionate to achieve its objectives.

*The right to self-determination*

Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that *‘[a]ll 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’.*

The Rules do not limit or interfere with the right to self-determination or a person’s right to freely pursue their economic, social or cultural development. Rather, the Rules promote a participant’s autonomy by authorising the crediting of that participant’s income management account in prescribed circumstances, which includes enabling credited amounts to be used for essential goods and services, and ensuring an income management participant is not financially disadvantaged by expenses that relate to operationalising the person’s participation in the income management regime.

*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 (UN Committee) has stated that implementing this right 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. The UN Committee has stated that the right to social security encompasses the right to access and maintain benefits ‘in cash or in kind’.

Income management does not reduce the amount of a person’s welfare entitlements. Rather, it provides a mechanism to ensure that certain recipients of welfare payments use a proportion of their entitlement to acquire essential items, including all of those referred to by the UN Committee. In particular, the Rules enable credited amounts to be used by income management participants for essential goods and services.

*The right to an adequate standard of living*

Article 11(1) of the ICESCR recognises the right to an adequate standard of living. This recognises the right of everyone to an adequate standard of living for all individuals and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Through income management, a prescribed portion of a person’s welfare payments can be directed to pay for essential goods and services. Income management does not limit a person’s right to an adequate standard of living. Instead, income management aims to advance this right by ensuring that money is available for priority goods such as food, clothing and housing, including through amounts credited in accordance with the Rules. Income management provides a tool to help people budget, and can also help people stabilise their lives, so they can care for their children, and join or return to the workforce.

**Conclusion**

By prescribing circumstances in which a person’s income management account will be credited with monetary amounts, the Rules provide greater financial support to income management participants, including enabling the credited amounts to be used for essential goods and services.

The Rules are compatible with human rights as they promote and support the right to social security and the right to an adequate standard of living, and do not limit or interfere with the right to self-determination. To the extent the Rules engage or limit the rights to equality and non-discrimination, the impact is for a legitimate objective and is reasonable, necessary and proportionate.

**The Hon Tanya Plibersek MP, Minister for Social Services**