



Social Security (Administration) (Recognised State/Territory Authority — NT Alcohol and Drugs Tribunal) Determination 2012

Social Security (Administration) Act 1999

I, JENNY MACKLIN, Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform, acting under subsection 123TGAA(1) of the *Social Security (Administration) Act 1999* and on behalf of the Minister for Employment and Workplace Relations and the Minister for Tertiary Education, Skills, Science and Research, and being satisfied of the matters set out in subsections 123TGAA(2) and (3) and having regard to the matters set out in subsection 123TGAA(4), make this Determination.

Dated 27 September 2012

J Macklin

Minister for Families, Community Services and Indigenous Affairs and
Minister for Disability Reform

2012-13 Additional Estimates
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1 Name of Determination

This determination is the *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012*.

2 Commencement

This determination commences on 1 October 2012.

3 Interpretation

In this determination:

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

NT Alcohol and Drugs Tribunal means the Tribunal established by section 46 of the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* (NT).

4 Recognised State/Territory Authority

The NT Alcohol and Drugs Tribunal is a recognised State/Territory authority for the purposes of Part 3B of the Act.

EXPLANATORY STATEMENT

Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012

The *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012* (the **Determination**) is made under section 123TGAA of the *Social Security (Administration) Act 1999* (the **Act**).

Background

The income management regime set up under Part 3B of the Act operates as a tool to support vulnerable individuals. A person subject to the income management regime has an income management account. Amounts are deducted from the person's welfare payments and credited to the person's income management account. Amounts are debited from the person's income management account for the purposes of enabling the Secretary to take action directed towards meeting the priority needs of the person. Income managed funds cannot be used for excluded items, such as alcohol, tobacco, pornography and gambling products.

Part 3B currently includes measures to income manage individuals referred by a child protection officer, long-term recipients of welfare payments, disengaged youth, people assessed as vulnerable and people who voluntarily opt-in to income management.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to the income management regime. Section 123UFAA provides that a person is subject to the income management regime at a particular time (the **test time**) if, among other things, before the test time, an officer or employee of a **recognised State/Territory authority** has given the Secretary a written notice requiring that the person be subject to the income management regime, and, at the test time, the State or Territory is a **recognised State or Territory**.

The term recognised State/Territory authority has the meaning given by section 123TGAA of the Act. Subsection 123TGAA(1) provides that the Minister may, by legislative instrument, determine that a specified department, part of a department of a State or Territory, body of a State or Territory or an agency of a State or Territory is a recognised State/Territory authority for the purposes of Part 3B.

Operation of the NT Alcohol and Drug Tribunal

The NT Alcohol and Drug Tribunal (the Tribunal) is established by section 46 of the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* (NT) (the NT Act). The Tribunal's main purpose is to consider whether a person is misusing a substance, and if so, the Tribunal will make orders to help that person access counselling or intervention. The Tribunal has the authority to:

- make Banning Alcohol and Drugs and Treatment (BADT) orders for people assessed as misusing a substance, including orders to undertake treatment and rehabilitation,
- make General Alcohol Prohibition orders (GAP) orders, if the clinician is unable to make an assessment of the person within reasonable time
- review police-issued Banning Alcohol and Treatment (BAT) notices,
- consider reducing the length of a ban imposed by a BAT notice upon receipt of completed Alcohol Intervention Certificates, and
- accept applications from people wanting to be assisted by the Tribunal, whether to help manage their own substance use or to stop others humbugging them to buy alcohol.

The Tribunal can also redirect people into rehabilitation and treatment by making:

- an ex parte order in the absence of the problem drinker attending the Tribunal hearing; and
- an order that a person be subject to income management. Where such a person otherwise meets the requirements of the Act, they will have 70 per cent of their welfare payments income managed for the term of the order.

The objects of the NT Act, which created the Tribunal, are to:

- prevent the commission of alcohol related offences,
- prevent the misuse of alcohol and drugs,
- protect people who are misusing alcohol or drugs from severe or serious harm because of the misuse, and
- protect people, particularly children, from harm or nuisance resulting from the misuse of alcohol or drugs by others.

To assist in achieving these objectives the Tribunal has been established to facilitate prohibitions, increase availability to appropriate interventions, make compulsory assessment to assist treatment, and refer people to income management.

Purpose

The purpose of the Determination is to determine that the NT Alcohol and Drugs Tribunal is a recognised State/Territory authority for the purposes of Part 3B of the Act.

The Determination is a legislative instrument and commences on 1 October 2012.

Explanation of the Provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on 1 October 2012.

Section 3 contains definitions that are relevant to the determination.

Section 4 provides that the NT Alcohol and Drugs Tribunal is a recognised State/Territory authority for the purposes of Part 3B of the Act.

Consultation

Consultation on the Determination was undertaken with the Northern Territory Alcohol and Drugs Tribunal and the Commonwealth Department of Human Services, Department of Education, Employment and Workplace Relations and Department of Industry, Innovation, Science, Research and Tertiary Education.

Regulatory Impact Analysis

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

Statement of Compatibility with Human Rights

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

This Legislative Instrument is the *Social Security (Administration) (Recognised State/Territory Authority — NT Alcohol and Drugs Tribunal) Determination 2012*

This 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 Legislative Instrument

Section 123TGAA of the *Social Security (Administration) Act 1999* (the Act) provides that the Minister may, by legislative instrument, determine that a specified department (or part of a department), a body or an agency of a State or Territory is a recognised State/Territory Authority for the purposes of Part 3B of the Act. The *Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012* (the Determination) is made under this section, specifying the Northern Territory Alcohol and Drugs Tribunal (the Tribunal) as a recognised Territory Authority.

The Tribunal was established in July 2011 as part of the 'Enough is Enough' Northern Territory Alcohol Reforms. It can review Banning and Treatment (BAT) notices issued by NT police and issue Banning Alcohol and Drugs Treatment (BADT) orders. In making a BADT order the Tribunal may make an order referring people for the NT Alcohol and Drugs Tribunal measure of income management. The *Social Security (Administration) (Recognised State or Territory – Northern Territory) Determination 2012* is also being made to determine the Northern Territory as a recognised Territory for the purposes of Part 3B of the Act, which is a further requirement that must be met before a person can be made subject to the income management regime under section 123UFAA of the Act.

The key objectives of income management under the Act are to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependants,
- help affected welfare payment recipients to budget so that they can meet their priority needs,
- reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography,

- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments, and
- encourage socially responsible behaviour, particularly in the care and education of children.

Under this measure of income management 70 per cent of a person's income support payment is directed towards priority items, such as food, housing, clothing and utilities, and cannot be spent on alcohol, tobacco, pornographic material and gambling products. This measure assists the referred person to address alcohol and substance misuse issues.

Human rights implications

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 UN Committee on Economic, Social and Cultural Rights 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'.

Income management does not reduce the amount of a person's social security entitlement. Rather, it provides a mechanism to ensure that certain recipients of social security entitlements use a proportion of their entitlement to acquire essential items, including all of those referred to by the UN Committee. The UN Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'.

The right to an adequate standard of living

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'* and that *'appropriate steps'* be taken to *'ensure the realization of this right'*. Further to this, article 11(2) of the ICESCR states that *'measures, including specific programmes,'* should be taken in *'recognizing the fundamental right of everyone to be free from hunger'*.

Through income management, 70 per cent of a person's income support and family payments are directed to pay for life's essentials. Income management does not limit a person's right to an adequate standard of living. Instead, it aims to advance this right by ensuring that money is available for priority goods such as food, clothing and housing, and provides a tool to help people

budget. Income management can also help people stabilise their lives, so they can care for their children, and join or return to the workforce.

The rights of children

By ensuring that a portion of income support payments are used to cover essential goods and services, income management can improve living conditions for the children of income support recipients. It thereby advances the right of children to benefit from social security, the right of children to the highest attainable standard of health and the right of children to adequate standards of living (arts 26, 24 and 27 of the Convention on the Rights of the Child, respectively).

The right to self-determination

Article 1 of the 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'*.

The application of income management by the Tribunal will not affect the means of subsistence or political status of any person or group, but will require that 70 per cent of the social security payments of persons subject to the income management regime must be spent on priority goods and services such as food and rent. Whilst income management does limit a person's ability to freely dispose of all of their social security benefit it does not impact on their right to pursue their economic, social or cultural development. The limitation under income management on how social security benefits may be spent is to ensure that the essential needs of vulnerable people are met and that they are protected against risks of homelessness and financial exploitation.

The limitation of Rights under the ICESCR

Article 4 of the ICESCR provides that a State may limit the rights outlined in the Convention *'only to such limitations as are determined by law only in so far as this 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 in the above paragraphs, this Determination, in supporting the application of the income management regime, does not unreasonably limit a person's rights to dispose of their resources. The purpose of these limitations is to help people stabilise their circumstances and address financial issues. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

Conclusion

This Determination is compatible with human rights. It protects human rights by ensuring that 70 per cent of the income support payments of people identified as at risk by the NT Alcohol and Drugs Tribunal is directed towards meeting their priority needs. This limitation is reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

**The Hon Jenny Macklin MP, Minister for Families, Community Services
and Indigenous Affairs and Minister for Disability Reform**