

## Advice only

1.139 The committee draws the following bills and instruments to the attention of the relevant minister or legislation proponent on an advice only basis. The committee does not require a response to these comments.

### **Social Security (Administration) (Recognised State/Territory Authority – Northern Territory Department of Health) Determination 2017 [F2017L01371]**

<b>Purpose</b>	Determines the Northern Territory Department of Health as a recognised State/Territory authority for the purposes of Part 3B of the <i>Social Security (Administration) Act 1999</i> .
<b>Portfolio</b>	Social Services
<b>Authorising legislation</b>	<i>Social Security (Administration) Act 1999</i>
<b>Last day to disallow</b>	15 sitting days after tabling (tabled Senate 13 November 2017). Notice of motion to disallow currently must be given by 8 February 2018
<b>Rights</b>	Multiple Rights (see <b>Appendix 2</b> )
<b>Status</b>	Advice only

### **Background**

1.140 The *Social Security (Administration) Act 1999* provides the legislative basis for the income management regime for certain welfare recipients in the Northern Territory and other prescribed locations.<sup>1</sup> Income management limits the amount of income support paid to recipients as unconditional cash transfers and imposes restrictions on how the remaining 'quarantined' funds can be spent. A person's income support can be subject to automatic deductions to meet 'priority needs', such as food, housing and healthcare. The remainder of the restricted funds can only be accessed using a 'BasicsCard', which can only be used in certain stores and cannot be used to purchase 'excluded goods' or 'excluded services'.<sup>2</sup>

1.141 A person on welfare benefits can voluntarily sign up for income management, or be made subject to compulsory income management.

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1 See *Social Security (Administration) Act 1999*, Part 3B.

2 See, further, Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 39.

1.142 The committee examined the income management regime in its 2013 and 2016 Reviews of the Stronger Futures measures.<sup>3</sup> In its 2016 review, the committee noted that the income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family.<sup>4</sup>

**Determining the Northern Territory Department of Health as a recognised State/Territory authority for the purposes of Part 3B of the *Social Security (Administration) Act 1999***

1.143 The Social Security (Administration) (Recognised State/Territory Authority – Northern Territory Department of Health) Determination 2017 (the determination) determines the Northern Territory Department of Health as a recognised State/Territory authority for the purposes of Part 3B of the Social Security (Administration) Act. The effect of being recognised as a State/Territory authority is that an officer or employee of the Northern Territory Department of Health may give the Secretary of the relevant Commonwealth department a written notice requiring that a person be subject to income management.<sup>5</sup>

1.144 The determination replaces the Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol Mandatory Treatment Tribunal) Determination 2013 which recognised the NT Alcohol Mandatory Treatment Tribunal (AMTT) as a State/Territory authority for the purposes of Part 3B. The AMTT previously had responsibility for issuing notices that people be subject to income management in accordance with the *Alcohol Mandatory Treatment Act 2013* (NT) (AMT Act).

1.145 However, the AMT Act and AMTT framework were repealed and replaced by the *Alcohol Harm Reduction Act 2017* (NT) (Alcohol Harm Reduction Act). The Alcohol Harm Reduction Act establishes a legal framework for making banned drinker orders (BDOs) to enable adults to be registered on the banned drinkers register (BDR). BDOs and the BDR are facilitated by the BDR Registrar, who is located within the Northern Territory Department of Health and is an employee of that department.

1.146 The Alcohol Harm Reduction Act provides that the BDR Registrar may order than an adult is required to be subject to income management if the BDR Registrar is satisfied that:

(a) either:

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3 See Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation* (27 June 2013) and *2016 Review of Stronger Futures measures* (16 March 2016).

4 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 61.

5 Explanatory Statement (ES), p. 1.

- (i) a BDO is in force for the adult for a period of 12 months; or
- (ii) a BDO will be in force for the adult for a period of 12 months when the income management order comes into force; and
- (b) the adult would benefit from the making of an income management order; and
- (c) the adult, or the adult's partner, is an eligible recipient of a category H welfare payment under Part 3B of the Social Security Administration Act.<sup>6</sup>

### ***Compatibility of the measure with multiple rights***

1.147 The 2016 Review considered that income management, including the income management referral scheme undertaken by the former AMTT,<sup>7</sup> engages and limits the following rights:

- the right to equality and non-discrimination;
- the right to social security; and
- the right to privacy and family.

1.148 Each of these rights is discussed in detail in the context of the income management regime in the committee's *2016 Review of Stronger Futures measures* (2016 Review).<sup>8</sup>

1.149 The statement of compatibility for the determination recognises that multiple rights are engaged and limited by the determination. In relation to the right to social security, the statement of compatibility explains that income management does not reduce a person's social security payment, it just changes the way the person receives it.<sup>9</sup> The statement of compatibility further states that to the extent income management may disproportionately affect Indigenous Australians, any such limitation is reasonable and proportionate.<sup>10</sup> Further, it states that the limitation on how a person accesses and spends their money is a proportionate limitation on a person's right to a private life in order to achieve the objectives of ensuring income support payments are used to meet the essential needs of vulnerable people and their dependents.<sup>11</sup> It concludes:

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6 Section 27 of the *Alcohol Harm Reduction Act 2017* (NT).

7 See Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 38 and p. 41.

8 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) pp. 43-63.

9 Statement of Compatibility (SOC), p. 7.

10 SOC, pp. 7-8.

11 SOC, p. 9.

The recognition of the Northern Territory Department of Health as an income management referring authority will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependents. To the extent the determination may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of income management.<sup>12</sup>

1.150 In the 2016 Review, the committee accepted that the income management regime pursues a legitimate objective for the purposes of international human rights law, but questioned whether the measures were rationally connected to achieving the stated objective and were proportionate.<sup>13</sup> The committee's report noted:

While the income management regime may be of some benefit to those who voluntarily enter the program, it has limited effectiveness for the vast majority of people who are compelled to be part of it.<sup>14</sup>

1.151 The previous regime for referral to income management under the AMT Act required the AMTT to make an income management order if a person is subject to a mandatory treatment order.<sup>15</sup> In its 2016 review, the committee noted that the availability of any individual assessment of whether income management was appropriate for persons who received payments was relevant in assessing the proportionality of the measure:

In assessing whether a measure is proportionate some of the relevant factors to consider include whether the measure provides sufficient flexibility to treat different cases differently or whether it imposes a blanket policy without regard to the merits of an individual case, whether affected groups are particularly vulnerable, and whether there are other less restrictive ways to achieve the same aim...<sup>16</sup>

1.152 The BDR Registrar's powers in the Alcohol Harm Reduction Act provide greater flexibility to consider individual circumstances when determining whether

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12 SOC, p. 9.

13 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 42.

14 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 52.

15 Section 34 of the *Alcohol Mandatory Treatment Act 2013*. A mandatory treatment order was able to be made when the AMTT considered that an adult is misusing alcohol, had lost the capacity to make appropriate decisions about their alcohol use or personal welfare and the misuse was a risk to their health, safety or welfare or to others: see Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 41.

16 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 52.

income management should be ordered, including considering whether 'the adult would benefit from the making of an income management order'. An adult who is subject to income management may also apply to the BDR Registrar for variation or revocation of an income management order, and upon such application the BDR Registrar may vary or revoke the order if satisfied that it is appropriate to do so having regard to the criteria for making the order.<sup>17</sup> The new determination, and the income management referral scheme under the Alcohol Harm Reduction Act enabled by the determination, is therefore an improvement to the continuing compulsory income management as it allows flexibility to treat different cases differently and provides for consideration of a person's individual suitability for the program.

1.153 However, notwithstanding the greater flexibility to consider individual circumstances, the income management orders made by the BDR Registrar still impose compulsory, rather than voluntary, income management. The committee previously raised concerns in its 2016 review that imposing income management compulsorily may not be the least rights restrictive means of achieving the legitimate objectives of the measure.<sup>18</sup> Therefore, insofar as the regime does not operate voluntarily, the concerns raised in the 2016 Review regarding compulsory income management remain.

### **Committee comment**

**1.154 The effect of the determination is that an officer or employee of the Northern Territory Department of Health may give the Secretary a written notice requiring that a person be subject to income management.**

**1.155 Noting the human rights concerns regarding income management identified in the committee's *2016 Review of Stronger Futures measures*, the committee draws the human rights implications of the determination to the attention of the Parliament.**

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17 Section 29 of the *Alcohol Harm Reduction Act 2017*.

18 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) pp. 60-61.