

Ministerial responses — Report 5 of 2023¹

1 This can be cited as: Parliamentary Joint Committee on Human Rights, Ministerial responses, *Report 5 of 2023*; [2023] AUPJCHR 49.



The Hon Mark Butler MP
Minister for Health and Aged Care

Ref No: MC23-006486

Mr Josh Burns, MP
Chair
Joint Parliamentary Committee on Human Rights
human.rights@aph.gov.au

Dear Chair 

I refer to your correspondence of 9 March 2023 concerning the *Australian Immunisation Register Amendment (Japanese Encephalitis Virus) Rules 2022* made under the *Australian Immunisation Register Act 2015 (AIR Act)*.

The 2022 amendment to the *Australian Immunisation Register Rules 2015 (AIR Rules)* require recognised vaccination providers to report the administration of Japanese Encephalitis Virus (JEV) vaccines to the Australia Immunisation Register (AIR). This is an extension of current mandatory reporting requirements for COVID-19, influenza and National Immunisation Program vaccines.

Mandatory reporting of vaccinations for JEV administered in Australia will improve reporting of vaccinations to the AIR and ensure the AIR contains a complete and accurate dataset of vaccination information to better inform program delivery and respond to disease outbreaks.

Section 22 of AIR Act concerns 'protected information', which includes personal information obtained under, or in accordance with, the AIR Act. Section 22 of the AIR Act regulates how information may be collected, recorded, disclosed, or otherwise used. Section 23 of the AIR Act makes it an offence, punishable by imprisonment and/or penalty units, to obtain, make a record of, disclose or otherwise use protected information unless it is authorised under Section 22.

The changes to the AIR Rules do not impact or change the protections afforded to individuals under the above provisions. This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Additionally, I, as Minister, (or my delegate) may only authorise the disclosure of protected information in response to a disclosure request where I am satisfied it is in the public interest. All disclosure requests are considered in line with the secrecy provisions in Part 4 of the AIR Act and other under relevant legislation such as the *Privacy Act 1988*, specifically balancing the purpose of the disclosure against the privacy impact of disclosure on the affected individual.

I am satisfied that privacy protections in the AIR Act and AIR Rules are appropriate, and at this time I do not consider it necessary to specify classes of persons, or purposes, to which the disclosure should relate.

Thank you for writing on this matter.

Yours sincerely

Mark Butler

31 / 03 / 2023

Minister	Minister Butler
PDR Number	MC23-006486
Subject	Response to the PJCHR regarding the AIR Amendment (JEV) Rules
Initiator	Mr Josh Burns
Contact Officer	Nicholas Johnson (02) 6289 1437 0468 393 757
Clearance Officer	Sarah Norris (02) 6289 2626 0481 585 484
Division/Branch	Chief Medical Officer Group Emergency Management Division

Adviser/DLO comments:	Returned to Dept for: REDRAFT <input type="checkbox"/> NFA <input type="checkbox"/>
------------------------------	--

Please complete	
Quality Assurance Check (completed by line area)	Leslie Jacobs 0437 298 049



The Hon Amanda Rishworth MP

Minister for Social Services

Ref: MB23-000256

Mr Josh Burns MP
Member for Macnamara
Chair of Parliamentary Joint Committee on Human Rights
PO Box 6100
CANBERRA ACT 2600
human.rights@aph.gov.au

Dear Mr Burns

I refer to your correspondence dated 30 March 2023, regarding the Parliamentary Joint Committee on Human Rights *Report 4 of 2023* (the report), requesting information about the following:

- Social Security (Administration) Amendment (Income Management Reform) Bill 2023
- *Social Security (Administration) (Declinable transactions and BasicsCard Bank Accounts) Determination 2023*
- *Social Security (Administration) (Declinable transactions and BasicsCard Bank Accounts) Determination 2023*
- *Social Security (Administration) (Declared income management area — Ngaanyatjarra Lands) Determination 2023*
- *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2023*

I provide the below responses to the Committee's request.

Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2023

- (a) *whether in restricting access to the Disability Support Pension (DSP) in the manner set out in the instrument, Australia is fulfilling its minimum core obligations regarding the rights to social security and an adequate standard of living, such that when persons are ineligible for the DSP they are still provided with a minimum essential level of benefit.*

The Australian social security system is a non-contributory, means-tested, residence-based system, designed to provide income support to people who, for reasons such as age, unemployment or ill health, are unable to support themselves.

All social security payments have eligibility requirements to target support to those most in need. DSP is not a universal basic income for people with disability. It provides targeted assistance to those who are unable to work to fully support themselves because of their disability

or medical condition. Not all people with disability are eligible for DSP, as many people with disability are able to and do work.

People who are found ineligible for DSP because they don't meet the eligibility requirements when they are assessed under the Impairment Tables may be eligible for other income support payments, such as JobSeeker Payment, with modified activity requirements.

Where recipients have additional costs, such as those associated with renting in the private market or raising children, supplementary payments such as Commonwealth Rent Assistance and Family Tax Benefit are available. Other supplementary benefits that may be payable include Pharmaceutical Allowance, Carer Allowance, Remote Area Allowance, Telephone Allowance and Mobility Allowance, as well as a concession card. Individuals may also be eligible for support through the National Disability Insurance Scheme.

(b) whether the measure is necessary and proportionate, in particular, whether a person who does not meet the eligibility criteria can have their individual circumstances considered and so nonetheless be provided access to the DSP.

To determine eligibility for the DSP, Services Australia uses the *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pensions) Determination 2023* to assess how a person's functional impairment affects their ability to work. Without this instrument in place there is no legal basis to assess and grant DSP to new applicants, as the *Social Security Act 1991* (the Act) specifies one of the qualification criteria for DSP is for a person's impairment to be rated at 20 points or more under the Impairment Tables.

The 2011 Determination was due to expire by sunset on 1 April 2023 and therefore it was necessary for a new instrument to be in place to ensure there remains a legal basis to assess and grant new DSP claims.

Assessments undertaken for the purposes of determining eligibility for DSP are individual assessments against the criteria, with a level of discretion for assessors to determine eligibility. For example, there is some discretion within the Determination as to what is considered reasonable treatment, taking into account the availability and cost of available treatments.

If Services Australia makes a decision a person disagrees with, they have the right under social security law to ask for a review of the decision by an Authorised Review Officer. The review system is designed to ensure correct decisions are made in accordance with the Act. If, after this, people still have concerns about the correctness of the decision, they can seek review by the Administrative Appeals Tribunal. The Tribunal is a review body that can provide an independent new decision that substitutes for Services Australia decisions. Each of these steps in the appeal process is free of charge.

(c) whether any of the amendments in this measure are retrogressive (in that they constitute a backwards step) when compared with the previous legislative instrument, and if so whether this is a permissible retrogressive measure.

None of the amendments to the Impairment Tables are retrogressive. The increase in the number of descriptors a person is required to meet under Table 7 - Brain Function could be misconstrued as a backward step. This change was a result of adding a social skills descriptor to this Table to

address concerns around the representation of difficulties experienced by people with neurodiverse conditions. This addition has increased the number of available descriptors to 10.

Key organisations, including medical professionals have indicated that, while this is an increase in the requirement, it is important for social skills to be reflected and appropriate for the requirement to be raised as the vast majority of people assessed under Table 7 would experience difficulties with social skills and would be able to achieve at least 2 descriptors.

Social Security (Administration) Amendment (Income Management Reform) Bill 2023

(a) whether, as previously indicated, the government intends to eventually introduce a voluntary income management regime and, if so, how extending compulsory participation in the enhanced income management regime is consistent with this broader intention;

The Government is working with communities on the future of income management and what it looks like for them. Any decisions about the future of income management will be based on genuine consultation with a wide range of stakeholders, including First Nations leaders, women's groups, service providers, communities, people receiving welfare payments, and our state and territory government counterparts.

During consultation on the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* (the Repeal Act) many communities and stakeholders raised the limitations of the BasicsCard, citing that it is out of date and no longer meets their needs. The *Social Security (Administration) Amendment (Income Management Reform) Bill 2023* (the Bill) will provide individuals subject to the enhanced income management regime (enhanced IM) access to modern banking technology to ensure the program is more in tune with their needs until consultation on the long-term future of the programs is complete.

(b) in relation to the eligibility criteria relating to disengaged youth and long-term welfare payment recipients, what other geographical areas are intended to be specified by the minister by legislative instrument;

The purpose of this Bill is to expand access to enhanced IM, and its associated improved technology, by mirroring the structure and content of income management (IM) in Part 3B of the *Social Security (Administration) Act 1999* (the Administration Act).

Proposed section 123SDA, which would allow for the operation of the disengaged youth and long-term welfare payment recipient measures in areas other than the Northern Territory reflects the current operation of IM under Part 3B. The Government does not intend to make a legislative instrument extending these measures beyond the Northern Territory, where they currently operate under IM and enhanced IM.

As stated above, there is no intent to change how and where enhanced IM and IM operate until meaningful consultation has occurred with affected individuals, communities and experts.

(c) whether there is a risk that people in remote communities may experience difficulties accessing essential goods, particularly in situations where local businesses may not have adequate systems in place to prevent the sale of excluded products such that transactions made at these stores are able to be declined;

This Bill does not impose any further risk to accessing goods than those already prevalent in remote communities. This Bill enables participants to shop at a wider range of merchants, including online merchants, to ensure they have better access to goods and services.

In most cases, merchants will be able to accept the SmartCard without taking any action and there will be no impact on the individual or the merchant. Merchants are categorised into three groups for the purpose of the SmartCard:

- Restricted Merchants - Merchants who primarily sell restricted items (bottle shops, TABs, casinos, cigar stores); the SmartCard is not accepted at these stores. This is done by using a Merchant Category Code or Merchant ID and is managed by the card issuer.
- Unrestricted Merchants - Those which do not sell any restricted items. These merchants will be able to accept the Smartcard without taking any action.
- Mixed Merchants - which sell both restricted and unrestricted items.

The SmartCard is also supported by Product Level Blocking (PLB), which removes the manual effort away from merchants and automatically blocks the purchase of excluded goods and services when the SmartCard is used to pay in a mixed merchant setting.

To deploy PLB, the merchant must have an integrated point of sale whereby the EFTPOS terminal is linked to the register so it can identify when the SmartCard is used to make a purchase. In the event a business does not have access to this technology or is not willing to upgrade, Services Australia will work with the business to provide a Mixed Merchant Agreement (MMA).

The MMA is an agreement between the two entities that the business will uphold the intent of the Government's policy by manually preventing the sale of excluded goods and services. This ensures enhanced IM participants can continue to access essential goods, regardless of the technology available to merchants.

(d) how mandatory participation in the enhanced income management regime is effective to achieve the stated objectives;

As outlined above, the purpose of the Bill is to expand access to the improved technology associated with enhanced IM. It does not change the policy settings behind the IM regime. The Government is committed to consulting with affected communities on the future of IM and it will not make changes to the operation of IM until meaningful consultation has occurred.

The Bill provides existing and new enhanced IM participants with modern technology whilst that consultation occurs.

(e) whether there are recent evaluations of the mandatory income management regime under Part 3B and/or Part 3AA;

The enhanced IM regime commenced in the Northern Territory, Cape York and Doomadgee region on 6 March 2023 and, as such, has not yet been subject to evaluation. Following the passage of the Repeal Bill, the Government committed to conducting an evaluation of the transition to the enhanced IM measure, and work is underway to ensure we deliver on that commitment.

The IM regime under Part 3B of the Act has been subject to a number of evaluations. The findings of these evaluations are available from the Department of Social Services' website

<https://www.dss.gov.au/families-and-children-programmes-services-welfare-conditional-income-management/income-management-evaluations>).

The Government is committed to reforming IM and listening to the needs of communities. We did this when we abolished the Cashless Debit Card and introduced enhanced IM and we will continue to do so.

(f) the nature of the consultation that was undertaken with affected communities and individuals regarding those aspects of the bill that relate to compulsory participation in the enhanced income management regime, and the outcomes of such consultation;

This Bill was developed based on consultation with First Nations peoples, community members and their leaders, service providers and other stakeholders who called for a measured approach to reforming IM. This includes feedback provided during the Senate Community Affairs Legislation Committee inquiry into the Repeal Bill.

(g) noting that consultation is intended to continue regarding the future of mandatory income management, why the bill does not include a sunset date or other provision to ensure that mandatory participation in the regime is time-limited;

Both IM and enhanced IM will continue to operate in the existing 12 locations across Australia, and in the Northern Territory, in their current form until the Government has undertaken further consultation on the future of IM.

As outlined above, enhanced IM replicates the policy settings underpinning IM, but provides access to improved technology. It is not appropriate for the regime itself to sunset as this could have a range of unintended consequences if appropriate transitional legislation is not passed prior to the sunset date. To demonstrate the Government's commitment to ongoing and meaningful consultation on the future of IM, the legislative instruments that will operationalise enhanced IM will be self-repealing after a set period of time.

These instruments will be made concurrently with commencement of the Bill and will be subject to parliamentary scrutiny and disallowance.

(h) whether consideration was given to less rights restrictive ways to achieve the stated objective, including voluntary participation or only subjecting individuals to the regime based on individual circumstances;

The objective of the Bill is to expand access to modern banking technology to individuals currently subject to IM and to individuals who will become subject to enhanced IM in the future. The Bill does this by inserting new measures into Part 3AA of the Administration Act that mirror the measures and eligibility criteria for IM in Part 3B. This ensures accessibility to modern technology while further consultation is undertaken on the future of IM.

All individuals who become subject to IM and enhanced IM do so on the basis of their individual circumstances. While an individual's usual place of residence is relevant, it is only one of a number of criteria that must be satisfied.

(i) what other safeguards would operate to assist proportionality; and

As noted in the report, this Bill establishes a number of safeguards. All individuals who become subject to IM and enhanced IM do so on the basis of individual circumstances. If those circumstances change, they may exit IM or enhanced IM. Enhanced IM also significantly expands access to shopping outlets and mainstream banking functions, and the Secretary is able to vary the percentage of qualified portions of a person's welfare payment in certain circumstances that may affect an individual's ability to access money in their BasicsCard bank account.

The Government considers that the Bill, together with relevant legislative instruments provide sufficient safeguards at this time. We will continue to listen and respond to the needs of communities as we progress on the reform of Income Management, including identifying any other appropriate safeguard options.

(j) whether participants who will be compulsorily subjected to the enhanced income management regime will have an opportunity in the future to opt-out of this regime or cease their participation in mandatory income management.

The Government is committed to reforming IM across Australia and is working with communities, individuals and key stakeholders and experts to consider the best way forward. Consultation is central to everything the Government does and we will not make a decision on the future of income management until extensive and meaningful consultation has occurred.

We will continue to listen to a wide range of stakeholders to inform the future of IM and deliver a range of supports that communities can use when and how it best suits them.

I trust the information provided will be of assistance.

Yours sincerely

Amanda Rishworth MP

18/4/2023