

EXPLANATORY STATEMENT

Social Security (Waiver of Debts – Victorian Bushfires) (FaHCSIA) Specification 2009

Made under section 1237AB of the Social Security Act 1991

Background

Section 1237AB of the *Social Security Act 1991* (the Act) provides that the Secretary may decide to waive the Commonwealth's right to recover debts arising under the Act that are included as a class of debts specified by the Minister by legislative instrument.

The purpose of this instrument is to specify a class of debts that may be waived. This would enable the Secretary to waive the Commonwealth's right to recover debts arising under the Act, incurred by persons who were adversely affected by the 2009 Victorian bushfires. A mirror instrument under the family assistance law has also been made to enable the waiver of debts arising from similar circumstances under the family assistance law.

The 2009 Victorian bushfires have impacted physically and emotionally on bushfire victims and their families. The reason for the making of this instrument is to ease the physical and emotional impact on any victim of the Victorian bushfires, who are unintentionally receiving an incorrect social security payment.

Explanation of this instrument

Section 1 sets out the name of the instrument, being the *Social Security (Waiver of Debts – Victorian Bushfires) (FaHCSIA) Specification 2009*.

Section 2 provides that the instrument commences on the day after the end of the period for disallowing it, in accordance with section 42 of the *Legislative Instruments Act 2003*. Subsection 1237AB(3) of the Act provides that an instrument made under that subsection 1237AB(1) is of no effect until the time allowed for its disallowance has passed. This instrument will commence on the day after the end of the disallowance period.

Section 3 contains definitions relevant to the Specification.

Section 4 specifies the class of debt that may be waived. A debt is in a specified class if:

- the debt was incurred by a person, and the person was adversely affected by the bushfires in Victoria during the bushfire period (the period beginning on the commencement of 29 January 2009 and ending at the end of 29 April 2009); and
- the debt was for a period that occurred either wholly or partly during the bushfire period; and

- If the debt was incurred for a period which occurred only partly during the bushfire period, then it is the part of the debt that is attributable to days occurring in the bushfire period.

Section 5 provides for when a person is considered ‘adversely affected’ by the bushfires in Victoria. A person is adversely affected if, as a direct result of the bushfires in Victoria:

- the person was seriously injured; or
- an affected family member of the person was killed; or
- the person’s principal place of residence was destroyed; or
- the person’s principal place of residence sustained major damage; or
- the person was unable to return to his or her principal place of residence for at least 24 hours; or
- a utility failure occurred in the person’s principal place of residence; or
- the person experienced psychological trauma.

It is intended that a causal relationship must exist between the bushfires and any of the circumstances listed above. For example, the utility failure must be caused by the bushfires in Victoria.

The term ‘seriously injured’ is defined in section 3. A person is seriously injured if they sustained injury and was admitted to hospital. It also includes the circumstance where a person would require admittance to hospital for their injury under normal circumstances, but due to the bushfire conditions, this was not possible.

The term ‘affected family member’ and ‘destroyed’ is also defined in section 3.

Subsections 5(2) to 5(6) provide further definitions relevant to determining when a person is adversely affected.

A person is taken to have experienced ‘psychological trauma’ (as defined in subsection 5(6)) if they were in the immediate area of the bushfire and one of the circumstances under paragraph 5(6)(b) was met. It is not necessary to prove that a person has actually experienced psychological trauma.

Section 6 provides two exceptions to the class of debts specified in section 4. That is, the following types of debts are excluded from the class of debts which may be waived:

- a debt that is incurred by a person if the person knowingly made a false or misleading statement, or knowingly provided false information, to the Commonwealth in relation to that debt; and
- a debt incurred under the compensation recovery regime under Division 5 of Part 3.14 of the Act. Compensation recovery debts do not fall within the class of debts specified by the Minister in this instrument, hence the Secretary does not have the discretion to waive compensation recovery debts under section 1237AB. Compensation recovery debts may occur where individuals and/or their partners have received income support and subsequently receive a compensation payment for economic loss related to a personal injury.

Consultation

Public consultation has not been undertaken as this instrument is of a purely beneficial character. Consultation was undertaken with Centrelink and the Department of Education, Employment and Workplace Relations in relation to this instrument. A mirror instrument has also been made by the Minister for Employment to allow the waiver of debts for which the Minister for Employment has responsibility.

Regulatory Impact Statement

A Regulatory Impact Statement and a Business Costs Calculator are not required as the waiver of the Commonwealth's right to recovery social security debts will have no regulatory or competition impacts, and will not impose compliance costs on businesses.