

EXPLANATORY STATEMENT

Social Security (Administration) (Exempt Welfare Payment Recipients — Persons with Dependent Children) (Specified Activities) Determination 2010

The *Social Security (Administration) (Exempt Welfare Payment Recipients — Persons with Dependent Children) (Specified Activities) Determination 2010* is made under subsections 123UGD(2) and (3) of the *Social Security (Administration) Act 1999* (the Act). The Minister for Families, Housing, Community Services and Indigenous Affairs, as well as making this Determination in her own capacity, is also making them on behalf of the Minister for Education and the Minister for Employment and Workplace Relations.

Background

The *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (the Amending Act) amended Part 3B of the Act to provide the basis for a national welfare reform initiative aimed at supporting disengaged and vulnerable welfare recipients in disadvantaged locations across Australia. Three new income management measures have been introduced, to be used in selected locations in Australia, covering:

- people aged 15 to 24 who have been in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for more than 12 weeks in the last 26 weeks (the disengaged youth measure); and
- people aged 25 and above (and younger than Age Pension age) who have been in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for more than 52 weeks in the last 104 weeks (the long-term welfare payment recipient measure); and
- people assessed by the Secretary as requiring income management for reasons including vulnerability to financial crisis or economic abuse (the vulnerable welfare payment recipient measure).

This Determination has been made for the purposes of the new disengaged youth and long-term welfare payment recipient measures.

Purpose

New Subdivision BB of Division 2 of Part 3B of the Act provides for exemptions for people who become subject to income management under the new disengaged youth and long-term welfare payment recipient measures (the new measures).

For people without dependent children, the exemption criteria (in section 123UGC of the Act) relate, in general terms, to engagement in full-time study or a sustained pattern of employment.

For people with dependent children, the exemption criteria (in section 123UGD of the Act) relate, in general terms, to responsible parenting practices and to whether there have been indications of financial vulnerability in relation to a person during the preceding 12 months. (The term 'dependent child' is defined in section 123UGC of the Act as being a child who is a 'school age child' or younger. 'School age child' is defined, in section 123UGG of the Act, as being a child who is required under a law of a State or Territory to be enrolled at, or attend, a school.)

The *Social Security (Administration) (Exempt Welfare Payment Recipients — Persons with Dependent Children) (Indications of Financial Vulnerability) Principles 2010* set out decision-making principles that the Secretary must comply with in deciding whether he or she is satisfied that there have been no indications of financial vulnerability in relation to a person in the preceding 12 months.

The requirements that apply to a person, under paragraph 123UGD(1)(b) of the Act, in relation to each dependent school age child of the person are that the Secretary must be satisfied that, at the test time:

- the child is enrolled at a school, and the child has not had more than 5 unexplained absences in each of the 2 school terms ending immediately before the test time; or
- the child is covered by a schooling arrangement that is acceptable under a law of a State or Territory as an alternative to enrolment or attendance at a school (for example, a home-schooling arrangement), and the child's schooling, under that arrangement, is progressing satisfactorily; or
- the child is participating in an activity (an **alternative school-age activity**) specified by the Minister, by legislative instrument.

This Determination specifies alternative school-age activities for the purposes of the requirements in paragraph 123UGD(1)(b) of the Act.

The requirements that apply to a person, under paragraph 123UGD(1)(c) of the Act, in relation to each child of the person who is younger than school age, are that the Secretary must be satisfied that, at the test time, the person or the child is participating in the number and kind of activities (**pre-school activities**) specified by the Minister, by legislative instrument.

This Determination also specifies pre-school activities for the purposes of the requirements in paragraph 123UGD(1)(c) of the Act.

The Determination is a legislative instrument, and commences on 9 August 2010.

Explanation and effect of provisions

Section 1 sets out the title of the Determination.

Section 2 provides that the Determination commences on 9 August 2010.

Section 3 contains definitions that are relevant to the Determination.

Of note, subsection 3(2) sets out an interpretation provision that is relevant to determining, under section 6, which number and kind of pre-school activities apply to a dependent child who is not a school age child. Subsection 3(2) provides that a child is 'unable to participate in an engagement-related activity' (that is, an activity that is set out in Part 3 of Schedule 2, if the child has a severe disability or severe medical condition and, because of that disability or medical condition, the child is not able to participate in any of the activities set out in Part 3 of Schedule 2 of the Determination. Part 3 of Schedule 2 sets out a range of activities that relate to children's intellectual, physical and social development. (Subsection 3(1) of the Determination provides that the term 'severe disability or severe medical condition' has the same meaning in this Determination as it does in Part 2.5 of the *Social Security Act 1991*, where the term is used in the context of qualification provisions relating to carer payment.

Section 4 of the Determination provides for **Schedule 1** of the Determination, which sets out alternative school-age activities for the purpose of subparagraph 123UGD(1)(b)(iii) of the Act. As explained under the discussion of 'Purpose', above, paragraph 123UGD(1)(b) of the Act applies in relation to a dependent child of a person who is a school age child (as defined in section 123UGC of the Act). For paragraph 123UGD(1)(b), in the context of determining whether a person is an exempt welfare payment recipient for the purposes of the new measures, the Secretary must, in general terms, be satisfied that each school age child of the person is attending school (in accordance with subparagraph 123UGD(1)(b)(i)), is progressing satisfactorily with an alternative schooling arrangement (in accordance with subparagraph 123UGD(1)(b)(ii)), or is participating in an activity specified in Schedule 1 of this Determination.

Section 4 provides that the activity set out in Schedule 1 only applies in relation to a particular class of school age children — school age children who have a terminal condition. (Subsection 3(1) provides that the term 'terminal condition' has the same meaning, in this Determination, as in the *Social Security Act 1991*.)

The effect of section 4 and Schedule 1 is twofold. First, for the purposes of subsection 123UGD(1)(b) of the Act, the Secretary may determine that a person who has a dependent school age child with a terminal condition is an exempt welfare payment recipient for the purposes of the new measures if, in addition to being satisfied of the other things that the Secretary is required to be satisfied of under subsection 123UGD(1), the Secretary is satisfied that the child is participating in ongoing treatment in relation to their condition. Second, in relation to a school age child who does not have a terminal condition, the Secretary would have to be satisfied that the conditions in subparagraph 123UGD(1)(b)(i) or (ii) were met.

No other alternative school-age activities have been provided for in this Determination, the first iteration of this instrument, because there is a general expectation that children are enrolled in and attending school.

Section 5 of the Determination provides for **Schedule 2** of the Determination, which sets out alternative pre-school activities for the purpose of paragraph 123UGD(1)(c) of the Act. As explained under the discussion of 'Purpose', above, paragraph 123UGD(1)(b) of the Act applies in relation to a dependent child of a person who is not a school age child (as defined in section 123UGC of the Act).

For paragraph 123UGD(1)(c), in the context of determining whether a person is an exempt welfare payment recipient for the purposes of the new measures, the Secretary must be satisfied that the person or the child is participating in the required number and kind of activities specified in the Determination. **Section 6** specifies the number and kinds of pre-school activities in relation to different classes of dependent children (other than school age children). The number and kind of activities that apply are determined with reference to 3 main factors:

- the age of the child;
- the medical condition of the child; and
- whether the child is attending pre-school.

Item 7 of the table in section 6 sets out the number and kind of activities in relation to any child who is younger than school age and who has a terminal condition. The requirement in item 7 is the only requirement that applies to a child who is younger than school age and who has a terminal condition, regardless of the child's precise age. (The other requirements in items 1 to 6 of the table in section 6 are all expressed to apply to a child to whom item 7 does not apply: that is, a child who does not have a terminal condition.)

Under item 7 of the table in section 6, for the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in only 1 activity from Part 1 of Schedule 2. As at the commencement of this Determination, only 1 activity is listed in Part 1 of Schedule 2. Accordingly, for subparagraph 123UGD(1)(c), a child who is younger than school age and who has a terminal condition would need to be participating in a program of treatment provided in relation to that terminal condition. In this context, because of the definition in section 3 of the Determination, treatment includes care and so could include, for example, palliative care.

Item 1 of the table in section 6 applies to a child who is aged less than 36 months (other than a child of that age with a terminal condition). For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in 2 activities listed in Part 2 of Schedule 1. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. Regular monitoring of health and physiological development is considered beneficial for all young children to maintain healthy growth and development. In addition, engagement with health services relating to child development is considered an indicator of responsible and engaged parenting.

Items 2 and 3 of the table apply to children who are aged between 36 and 48 months. To determine whether item 2 or 3 will apply in relation to a particular child, in a particular case, it is necessary to look at the conditions specified in column 3 of the items.

Item 2 of the table in section 6 applies to a child who is aged between 36 and 48 months (other than a child of that age with a terminal condition), and who has a severe disability or severe medical condition (as defined in subsection 3(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in 3 of the activities listed in Part 2 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. This specific rule recognises that children who have a severe disability or medical condition may have difficulties accessing or participating in the kinds of activities listed in Part 3 of Schedule 2, and that it is appropriate for the focus, for paragraph 123UGD(1)(c) of the Act, to be on participation in activities that are specifically tailored to addressing their particular health concerns.

Item 3 of the table in section 6 applies to a child who is aged between 36 and 48 months (other than a child of that age with a terminal condition), and who does not have a severe disability or severe medical condition (as defined in subsection 3(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in 2 of the activities listed in Part 2 of Schedule 2 plus 1 of the activities listed in Part 3 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. The activities that are listed in Part 3 of Schedule 2 are activities that relate to the child's intellectual, physical and social development.

In addition to regular engagement with health and physiological development services, it is appropriate for children in this age group to be participating in some form of socialisation or engagement. The flexible range of activities specified in Part 3 of Schedule 2 acknowledges that formal or facilitated services are not always available for children in this age group but recognises the benefits of social interaction for both children and their parents.

Items 4, 5 and 6 apply to children who are aged at least 48 months and who are not school age children. To determine which of those items will apply in relation to a particular child, in a particular case, it is necessary to look at the conditions specified in column 3 of the items.

Item 4 of the table in section 6 applies to a child who is aged at least 48 months (other than a child of that age with a terminal condition), who has a severe disability or severe medical condition (as defined in subsection 3(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2, and who is not attending pre-school. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in 3 of the activities listed in Part 2 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. This specific rule recognises that children who have a severe disability or medical condition may have difficulties accessing or participating in the kinds of activities listed in Part 3 of Schedule 2, and that it is appropriate for the focus to be on participation in activities that are specifically tailored to addressing their particular health concerns.

Item 5 of the table in section 6 applies to a child who is aged at least 48 months (other than a child of that age with a terminal condition), who does not have a severe disability or severe medical condition (as defined in subsection 3(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2, and who is not attending pre-school. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in 2 of the activities listed in Part 2 of Schedule 2 and 2 of the activities listed in Part 3 of Schedule 2.

The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. The activities that are listed in Part 3 of Schedule 2 are activities that relate to the child's intellectual, physical and social development. Because the child is not attending pre-school, it is appropriate for there to be a requirement for the child to be participating in the kinds of activities set out in Part 3 of Schedule 2. More structured forms of social development should apply to children in this age group to in order to facilitate to school-readiness and cognitive development.

Item 6 of the table in section 6 applies to a child who is aged at least 48 months (other than a child of that age with a terminal condition), and who is attending pre-school. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in 2 of the activities listed in Part 2 of Schedule 2 and 2 of the activities listed in Part 3 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. Because the child is attending pre-school, which provides the child with socialisation opportunities as well as structured learning, there is no requirement for the child to be participating in any of the activities set out in Part 3 of Schedule 2 (which relate to similar developmental goals).

A child who is aged at least 48 months, and who has a severe disability or medical condition but who was attending pre-school despite that disability or condition would be covered by the requirements in item 6 of the table in section 6 (because they would not be a child to whom item 4 of the table in section 6 applies). For the purposes of paragraph 123UGD(1)(c) of the Act, the child would be required to be participating in 2 of the activities listed in Part 2 of Schedule 2.

Consultation

Consultation on this Determination was undertaken with the Department of Education, Employment and Workplace Relations to ensure a co-ordinated approach in respect of welfare payments, for which each Department has responsibility, which may become subject to the income management regime. Centrelink was also consulted on the Determination.

Regulatory Impact Analysis

This Determination does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.