

EXPLANATORY STATEMENT

Social Security (Waiver of Debts – Disasters) (FaHCSIA) Specification 2011

Made under section 1237AB of the *Social Security Act 1991*

Background

Subsection 1237AB(1) 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 flooding disasters in late 2010 and early 2011. 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 2010 and 2011 disasters have impacted physically and emotionally on disaster victims and their families. The reason for the making of this instrument is to ease the physical and emotional impact on a victim of the disasters, who unintentionally is 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 – Disasters) (FaHCSIA) Specification 2011*.

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 subsection 1237AB(1) does not take 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. Significantly, the term **disaster** is defined as:

- the heavy rainfall, storm damage and associated flooding in Queensland that began in November 2010 and continued into January 2011;
- the flooding in New South Wales determined to be a major disaster on 14 January 2011; and
- the flooding in Victoria determined to be a major disaster on 19 January 2011; and

- the severe weather, storm surges and flooding in Queensland that resulted from Tropical Cyclone Yasi.

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 disasters during the disaster period (the period beginning 1 November 2010 and ending at 19 March 2011); and
- the debt was for a period that occurred either wholly or partly during the disaster period; and
- if the debt was incurred for a period which occurred only partly during the disaster period, then it is the part of the debt that is attributable to days occurring in the disaster period.

Section 5 provides for when a person is considered 'adversely affected' by a disaster. A person is adversely affected if, as a direct result of a disaster:

- the person was seriously injured; or
- an affected family member of the person was killed; or
- an affected family member of the person was seriously injured; 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 disaster and any of the circumstances listed above. For example, the utility failure must be caused by the disaster.

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 disaster conditions, this was not possible.

The terms 'affected family member' and 'destroyed' are 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 disaster and one of the circumstances under paragraph 5(6)(b) was met. It is not necessary that a person has been medically diagnosed with psychological trauma, nor otherwise 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 wholly or partly due to the person, or another person, knowingly making a false statement or a false representation or failing or omitting to comply with a provision of the social security law; 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 the Department of Education, Employment and Workplace Relations (DEEWR) in relation to this instrument. DEEWR has also consulted Centrelink on this issue. A mirror instrument has been made by the Minister for Tertiary Education, Skills, Jobs and Workplace Relations to allow the waiver of debts for which the Minister 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.