

## EXPLANATORY STATEMENT

### ***Social Security (Administration) (Vulnerable Welfare Payment Recipient) Amendment Principles 2015***

#### **Summary**

The *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Amendment Principles 2015* (the **Amendment Principles**) are made for the purposes of subsection 123UGA(2) of the *Social Security (Administration) Act 1999* (the **Act**).

The Amendment Principles amend the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013* (the **2013 Principles**).

The Amendment Principles are made by the Minister for Social Services.

#### **Background**

Part 3B of the Act sets up an income management regime for recipients of certain social welfare payments, including the income management of persons under the vulnerable welfare payment recipient measure. The vulnerable welfare payment recipient measure is directed at people who are vulnerable to factors including financial crisis, economic abuse and homelessness or risk of homelessness.

Section 123UCA of the Act sets out the circumstances in which a person is subject to income management under the vulnerable welfare payment recipient measure. A person is subject to the income management regime under this provision if:

- (a) the person is an eligible recipient of a category H welfare payment; and
- (b) the person's usual place of residence is within a State, a Territory or area specified by the Minister for the purposes of section 123UCA; and
- (c) the person is a vulnerable welfare payment recipient; and
- (d) if the person has a payment nominee – the payment nominee is not an excluded payment nominee; and
- (e) the person is not subject to the income management regime under sections 123UC, 123UD, 123UE, 123UF or 123UFAA of the Act.

A person is a vulnerable welfare payment recipient for the purposes of paragraph 123UCA(1)(c) of the Act if the Secretary makes a written determination under subsection 123UGA(1) that the person is a vulnerable welfare payment recipient.

In making a determination under subsection 123UGA(1), the Secretary must comply with any decision-making principles made by the Minister. Subsection 123UGA(2) of the Act provides that the Minister may make decision-making principles that the Secretary must comply with in making a determination under subsection 123UGA(1) that a person is a vulnerable welfare payment recipient for the purposes of the income management regime under Part 3B of the Act.

The Secretary may vary or revoke such a determination under subsection 123UGA(5) of the Act. In doing so, subsection 123UGA(6) requires the Secretary to comply with decision-making principles in deciding whether to vary or revoke a determination that a person is a vulnerable welfare payment recipient.

The Amendment Principles include within Part 3 a person who has been released from psychiatric confinement and received a crisis payment within the last 13 weeks as vulnerable, extending the 2013 Principles which previously applied only to a person released from gaol.

The Amendment Principles also simplify the circumstances in which a person is not vulnerable despite being under 16 and receiving special benefit, or a young person receiving payment on the basis it is unreasonable for them to live at home, or has been released from gaol or psychiatric confinement. Where the person has recently received income, this is an indicator that the person is not vulnerable. The receipt of income may have reduced the person's rate of social security payment. Where the person has, within at least 4 of the last 6 fortnights received less than 25% of the usual maximum basic rate of various social security payments otherwise than because of a compliance penalty period, the Secretary is exempted from the requirement to make a determination that the person is vulnerable under Part 3 of the 2013 Principles. The Secretary may still consider Part 2 of the 2013 Principles and determine that the person is vulnerable under those decision-making principles.

Additionally, the Amendment Principles amend Part 3 of the Principles to exempt the Secretary from making a determination that a person is a vulnerable youth where the person is an apprentice. This extends the current exemption for persons who are undertaking full-time study.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Amendment Principles are a legislative instrument.

## **Explanation of Provisions**

**Section 1** states the name of the Amendment Principles.

**Section 2** states that the Amendment Principles commence the day after registration.

**Section 3** states that Schedule 1 to the Amendment Principles amends the 2013 Principles.

**Section 4** states that Items [7], [8] and [9] of the Amendment Principles apply to determinations made under subsection 123UGA(1) of the Act made before, on or after the commencement of the Amendment Principles.

**Schedule 1** contains the amendments to the 2013 Principles.

**Items [1], [2] and [6]** amend the headings to Part 3, and to sections 8 and 9 of the 2013 Principles by including a reference to persons released from psychiatric confinement. Previously the headings referred only to persons released from gaol, consequential to item [3].

**Item [3]** repeals and substitutes subsection 8(1) of the 2013 Principles.

Paragraphs 8(1)(a) and (b) have not been substantively changed but have been redrafted and shortened to improve their readability.

Substituted paragraph 8(1)(c) extends the scope of the former paragraph 8(1)(c) so that it applies to a person who has received a crisis payment within the last 13 weeks who has been released from psychiatric confinement. Paragraph 8(1)(c) previously applied only to persons who receive a crisis payment upon release from gaol.

**Items [4] and [8]** repeal and substitute paragraphs 8(2)(b) and 9(1)(c) of the 2013 Principles.

Substituted paragraphs 8(2)(b) and 9(1)(c) include circumstances where the person is an apprentice. Previously, these paragraphs had only applied where the person was undertaking full-time study.

**Item [7]** repeals and substitutes paragraph 9(1)(a) of the 2013 Principles. This paragraph previously applied to allow the Secretary to revoke a determination where the person no longer met the criteria in subsection 8(1) which allowed the determination to be made and the person requested the determination be revoked.

The Amendment Principles limit paragraph 9(1)(a) so that it applies only to determinations made under paragraphs 8(1)(a) or 8(1)(b) of the 2013 Principles. A determination made in compliance with paragraph 8(1)(c) will end at 12 months from being made, if not earlier revoked, as a result of

paragraph 123UGA(3)(b) of the Act.

**Item [5] and [9]** repeal and substitute paragraphs 8(2)(c) and 9(1)(d) of the 2013 Principles.

Paragraphs 8(2)(c) and 9(1)(d) of the 2013 Principles had previously applied where the person is actively involved in employment or study, the person is applying appropriate resources to meet their relevant priority needs and, within at least 4 of the last 6 fortnights, the person has received less than 25% of the rate of particular payments.

The effect of substituted paragraphs 8(2)(c) and 9(1)(d) is to omit reference to the person being ‘actively involved in employment or study’ and ‘applying appropriate resources to meet their relevant priority needs’, leaving reference only to the rate of payment received over the last 6 fortnights.

**Item [10]** inserts a new Part 4 and new section 10 into the 2013 Principles.

The effect of this inclusion is to clarify that a trial participant in the cashless welfare arrangements in Part 3D of the Act cannot also be a vulnerable welfare payment recipient under subsection 123UGA(1), such that they could be subject to income management under the vulnerable measure.

This exclusion from subsection 123UGA(1) applies to:

- (a) trial participants (within the meaning of Part 3D of the Act) for the purposes of cashless welfare arrangements; or
- (b) voluntary participants (within the meaning of Part 3D of the Act) for the purposes of cashless welfare arrangements.”

## **Consultation**

Consultation on the Amendment Principles was undertaken with the Department of Human Services as the service delivery agency.

## **Regulatory Impact Analysis**

The Amendment Principles are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

## Statement of Compatibility with Human Rights

### *Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

The *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Amendment Principles 2015* (the **Amendment Principles**) amend the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013* (the **2013 Principles**).

The Amendment Principles are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Amendment Principles**

Part 3B of the *Social Security (Administration) Act 1999* (the **Act**) establishes an income management regime that applies to recipients of certain welfare payments. If a person is subject to the income management regime under Part 3B, the Secretary will deduct amounts from the person's relevant welfare payments and credit those amounts to the person's income management account. The Secretary may then debit amounts from the person's income management account, in accordance with Part 3B, for the purpose of taking actions directed to meeting the priority needs of the person or his or her dependants, such as food, clothing and shelter, of the person and his or her dependants.

Under section 123UCA of the Act a person will be deemed a vulnerable welfare payment recipient and subject to the vulnerable measure of income management in certain circumstances. One of these criteria is that the Secretary (or delegate, such as a Centrelink social worker) has made a vulnerable welfare payment recipient determination about the person under subsection 123UCA(1) of the Act.

Part 2 of the 2013 Principles sets out the decision making principles that must be complied with by Centrelink social workers when deciding if a person will be placed on the vulnerable measure of income management.

The Amendment Principles make no changes to Part 2 of the 2013 Principles.

Part 3 of the 2013 Principles sets out decision making principles relating to certain persons who are vulnerable youth or have been released from gaol or psychiatric confinement.

Under Part 3 of the Principles, the Secretary is required to make a determination that, unless an exception applies, such a person is a vulnerable welfare payment recipient. The Amendment Principles introduce an additional exemption if a person is actively partaking in an apprenticeship.

The Amendment Principles make changes to Part 3 of the 2013 Principles so it is clear that people who are under the age of 25 and have received a crisis payment following release from gaol or psychiatric confinement will be placed on income management for a 12 month period.

### *Human rights implications*

#### The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises '*the right of everyone to social security, including social insurance*'. That right requires a country to, within its maximum available resources, provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Amendment Principles, together with the 2013 Principles, require the delegate to identify vulnerable persons, including young people, who may have difficulty acquiring the essential items outlined in Article 9 of the ICESCR. Young people subject to the vulnerable measure of income management retain their right to the same rate of social security, while being provided assistance to acquire the essential items outlined in Article 9 of the ICESCR. The requirement to allocate a percentage of their social security payments on self-maintenance, via food, clothing and housing costs, is a limitation which supports the aim of this right.

#### The right to an adequate standard of living

Article 11.1 of the ICESCR states that everyone has the right to '*an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*' and that '*appropriate steps*' be taken to '*ensure the realization of this right*'. Further to this, Article 11.2 of the ICESCR states that '*measures, including specific programmes,*' should be taken in '*recognizing the fundamental right of everyone to be free from hunger*'.

Through the vulnerable measure of income management, 50 per cent of a person's income support and family payments are directed to pay for life's essentials. Income management is a tool to stabilise a person's circumstances and ease immediate financial stress. It ensures that money is available for priority goods such as food, clothing and housing, and provides assistance to help people to budget. The Amendment Principles help the delegate identify people who require vulnerable income management to achieve an adequate standard of living and stable circumstances.

#### The right to self-determination

Article 1 of the ICESCR states that *'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'*.

The Amendment Principles assist in determining whether the vulnerable measure of income management is appropriate by providing further detail on existing decision making criteria and additional exemptions. The vulnerable measure of income management requires that 50 per cent of a person's social security payments must be spent on priority goods and services such as food and rent. While this measure does limit a person's ability to freely dispose of all of their resources it does not impact on their right to freely pursue their economic, social or cultural development. This limitation is to ensure that the essential needs of vulnerable people are met, and provide them with short-term financial stability, so they can better pursue their economic, social and cultural development. The Amendment Principles assist the delegate in applying the vulnerable measure of income management where it would assist people with their economic development, by ensuring they fulfil their priority needs and the priority needs of their child and other dependents. Once short-term financial stability is achieved, a person will be in a better position to pursue their long-term economic, social and cultural development.

#### The limitation of Rights under the ICESCR

Article 4 of the ICESCR provides that a State may limit the rights outlined in the Convention *'only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'*.

As noted in the above paragraphs, the Amendment Principles, in supporting the application of the vulnerable measure of income management do not unreasonably limit a person's rights to freely dispose of their resources. The purpose of these limitations is to help vulnerable people stabilise their circumstances and address issues of vulnerability, and the Amendment Principles assist in only limiting these rights where necessary and appropriate. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

#### The Right to a private life

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home. Privacy is linked to notions of personal autonomy and human dignity: it includes the idea that individuals should have an area of autonomous development; a 'private sphere' free from government intervention and excessive unsolicited intervention by others. The right to privacy requires that the state does not arbitrarily interfere with a person's private and home life.

As noted in the above paragraphs, the Amendment Principles, in supporting the application of the vulnerable measure of income management do not

unreasonably limit a person's rights to freely dispose of their resources. The purpose of these limitations is to help vulnerable people stabilise their circumstances and address issues of vulnerability, and the Amendment Principles assist in only limiting these rights where necessary and appropriate. These limitations are consistent with the nature of the rights outlined in the ICESCR, and are also aimed at promoting general welfare.

### *Conclusion*

The Amendment Principles are compatible with human rights. They will assist in the protection of human rights by ensuring that vulnerable people are appropriately identified for the vulnerable measure of income management, and ensuring income support payments are spent in the best interest of these vulnerable people. The Amendment Principles have been drafted to ensure that any limitation of freedom of expenditure and human rights is reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

**The Hon Christian Porter MP, Minister for Social Services**