

## EXPLANATORY STATEMENT

### ***Social Security (Administration) (Vulnerable Welfare Payment Recipient) Amendment Principles 2016***

#### **Summary**

The *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Amendment Principles 2016* (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**

##### The Statutory Scheme

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.

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.

Paragraph 123UGA(3)(b) provides that a determination made under subsection 123UGA(1) remains in force for 12 months, or for a shorter period specified in the determination.

The Secretary may vary or revoke a determination under subsection 123UGA(5) of the Act. In doing so, subsection 123UGA(6) requires the Secretary to comply with the decision-making principles.

### The 2013 Principles

Part 3 of the 2013 Principles guides the Secretary to make a determination about a person if certain circumstances apply to the person, unless an exception applies. The circumstances are:

- A person who is under 16 years of age and is receiving special benefit (paragraph 8(1)(a) of the 2013 Principles).
- A person who is over 16 years of age, but under 22 years of age, and is receiving certain payments at a rate calculated on the basis that he or she is independent (paragraph 8(1)(b) of the 2013 Principles).
- A person who is under 25 years of age and has received a crisis payment under section 1061JG of the *Social Security Act 1991* in the last 13 weeks (paragraph 8(1)(c) of the 2013 Principles).

Part 3 of the 2013 Principles also provides that such a determination may be revoked in certain circumstances. For example, one of these circumstances is that the person is undertaking full-time study or is an apprentice (paragraph 9(1)(c) of the 2013 Principles).

### The Amendment Principles

The Amendment Principles amend Part 3 to limit the period of time during which it is possible for a person to be subject to a determination made because one of the circumstances in paragraph 8(1)(a) or (b) apply to the person.

The time limit applies if a determination has been made in relation to a person because of the criteria in paragraph 8(1)(a) or (b). The period of 12 months from the date that that determination came into force will be the only period

during which the person will be subject to a determination because of the criteria in paragraph 8(1)(a) or (b). If the determination ends earlier than 12 months after coming to force, a subsequent determination will specify a period of effect which ends on the last day of the original 12 month period. Once the 12 month period has ended, further determinations as the result of the criteria in paragraph 8(1)(a) or (b) applying will not be made in relation to the person.

A transitional provision allows for the revocation of determinations in force when the Amendment Principles commence which were made because of the criteria in paragraph 8(1)(a) or (b). Revocation will be possible where a previous determination because of the criteria in paragraph 8(1)(a) or (b) has been made in relation to a person, and that determination came into force 12 or more months ago.

The position for determinations made because the criterion in paragraph 8(1)(c) applies is unchanged.

### Amendment of a Legislative Instrument

The Amendment Principles are a legislative instrument.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

### **Explanation of Provisions**

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

**Section 2** states that the Amendment Principles commence on 11 June 2016.

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

**Section 4** provides that Item [4] of Schedule 1 to the Amendment Principles applies to determinations made under subsection 123UGA(1) of the Act made before the commencement of the Amendment Principles.

**Schedule 1** amends the 2013 Principles.

**Item [1]** adds new subsections (1A) and (1B) to section 8. Subsection (1A) applies when the Secretary is guided to make a determination by paragraph 8(1)(a) or 8(1)(b). If a determination has been made about the person in the previous 12 months as a result of either of those provisions and which is no longer in force, the Secretary must specify that the new determination will remain in force for a period determined according to

subsection (1B). Subsection (1B) provides that the period ends on the final day of a 12 month period starting on the day that the previous determination came into force.

**Items [2] and [3]** add new paragraph (e) to subsection 8(2). The new paragraph creates an exception where the Secretary is guided to make a determination by paragraph 8(1)(a) or 8(1)(b). The exception applies if a determination was previously made as a result of either of those provisions that came into force on a day more than 12 months ago.

**Item [4]** adds a new Part to the Principles with transitional effect. It contains two sections. New section 11 creates a discretion to revoke a determination made as a result of paragraph 8(1)(a) or 8(1)(b). This discretion applies if the person subject to the current determination was previously subject to such a determination. The previous determination must have come into force on a day that was at least 12 months ago. New section 11 states that it has effect despite subsection 9(2). New section 12 repeals the new Part on 12 June 2017.

## **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 2016* (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**

The purpose of this instrument is to ensure that the decision making principles for the vulnerable youth measure of income management are consistent with section 8 of the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013* (the Principles) and its original policy intent. Specifically, to cease the automatic triggering arrangements for the VWR after 12 months. At this time a person may volunteer for income management or be assessed by a social worker.

The Amendment Principles amend Part 3 to limit the period of time during which it is possible for a person to be subject to a determination made because one of the circumstances in paragraph 8(1)(a) or (b) apply to the person.

The time limit applies if a determination has been made in relation to a person because of the criteria in paragraph 8(1)(a) or (b). The period of 12 months from the date that that determination came into force will be the only period during which the person will be subject to a determination because of the criteria in paragraph 8(1)(a) or (b). If the determination ends earlier than 12 months after coming to force, a subsequent determination will specify a period of effect which ends on the last day of the original 12 month period. Once the 12 month period has ended, further determinations as the result of the criteria in paragraph 8(1)(a) or (b) applying will not be made in relation to the person.

A transitional provision allows for the revocation of determinations in force when the Amendment Principles commence which were made because of the criteria in paragraph 8(1)(a) or (b). Revocation will be possible where a previous determination because of the criteria in paragraph 8(1)(a) or (b) has been made in relation to a person, and that determination came into force 12 or more months ago.

The position for determinations made because the criterion in paragraph 8(1)(c) applies is unchanged.

## *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**