

EXPLANATORY STATEMENT

Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017

Purpose

The *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017* (the 2017 Specification) revokes and replaces the *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2015* (the 2015 Specification).

The substance of the 2015 Specification has been retained in the 2017 Specification subject to some minor changes to include references to subsections 500WA(3) and 549CA(4) which were inserted in the *Social Security Act 1991* (the Act) by the *Social Services Legislation Amendment Act 2017*.

The definitional term *Remote Jobs and Communities Program* has been replaced with *Community Development Programme*. This name change occurred in 2015 when the Remote Jobs and Communities Program was reformed to deliver better opportunities for remote job seekers and foster stronger economic and social outcomes in remote Australia.

Background

Under certain provisions of the *Social Security Act 1991* (the Act), recipients of parenting payment, youth allowance and newstart allowance may be subject to certain non-payment periods (e.g. seasonal work preclusion period, or due to a move to an area of lower employment prospects) or waiting periods (e.g. liquid assets test waiting period or ordinary waiting period) before they can receive payment.

Under the 2017 Specification, the Secretary may, by legislative instrument, specify certain activities for the purposes of exempting a person who undertakes those activities from certain non-payment and waiting periods for parenting payment, youth allowance and newstart allowance.

The 2017 Specification also relies on the authority in subsection 33(3) of the *Acts Interpretation Act 1901*, which, in summary, provides that where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument.

Explanation of provisions

Section 1 states the name of the Specification.

Section 2 provides that the Specification commences on 1 July 2017.

Section 3 provides that the authority for making this Specification is subsections 500WA(3), 549A(6), 549CA(4), 553B(2A), 553C(5), 598(8A), 620(3), 633(5) and 634(2A) of the Act.

Section 4 revokes the *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2015*.

Section 5 contains definitions of certain terms used in the Specification. The definition for *rehabilitation program* has the same meaning as that given in subsection 23(1) of the Act. *Community Development Programme* means the employment and participation programme serving identified remote areas that started on 1 July 2015. *Stream C employment services* means those services specified as Stream C in the ‘jobactive Deed 2015-2020’. Stream C employment services are provided to the most disadvantaged or long-term unemployed jobseekers.

Section 6 specifies the activities that, if a person undertakes them, result in the person being exempt from:

- a liquid assets waiting period;
- an ordinary waiting period;
- a 26-week exclusion period, because the person has moved to an area of lower employment prospects; and
- a seasonal work preclusion period.

Paragraph 6(a) provides that a person who is undertaking an activity as part of Stream C employment services provided to the person is exempt from serving the waiting or non-payment periods mentioned above for parenting payment, youth allowance or newstart allowance. Under the jobactive employment services model, Stream C employment services are provided to the most disadvantaged or long-term unemployed jobseekers.

Paragraph 6(b) provides that a person who is undertaking a rehabilitation program is exempt from serving the waiting or non-payment periods mentioned above for parenting payment, youth allowance and newstart allowance. A ‘rehabilitation program’ is defined in the Act.

Paragraph 6(c) provides that a person who is participating in the Community Development Programme is exempt from serving the waiting or non-payment periods mentioned above for parenting payment, youth allowance and newstart allowance if the person would have been undertaking Stream C employment services or a rehabilitation program, if not for being in the Community Development Programme.

Consultation

The amendments made by this Specification are of a minor technical nature and so consultation with Department of Employment or the public was not undertaken.

Regulatory Impact Analysis

The Instrument does not require a Regulatory Impact Statement. The Instrument is 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*

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The *Social Security (Exemptions from Non-payment and Waiting Periods - Activities) Specification 2017* is 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 Legislative Instrument

The *Social Security (Exemptions from Non-payment and Waiting Periods - Activities) Specification 2017* (the Specification) revokes and replaces the *Social Security (Exemptions from Non-payment and Waiting Periods - Activities) Specification 2015* (the Revoked Specification) in order to reflect the extension of the Ordinary Waiting Period to new payment types from 1 July 2017¹. The Specification is made under subsections 500WA(3), 549A(6), 549CA(4), 553B(2A), 553C(5), 598(8A), 620(3), 633(5) and 634(2A) of the *Social Security Act 1991* (the Act).

Exemptions from certain waiting periods and non-payment periods

A person whose claim for parenting payment, youth allowance or newstart allowance has been granted under the Act may be first required to serve one of the following:

- a liquid assets test waiting period (ss 549A and 598);
- an employment-related exclusion as a result of moving to an area of low employment prospects (ss 553B and 634);
- a seasonal work preclusion period (ss 553C and 633); and
- an ordinary waiting period (s 620).

These waiting and non-payment periods may be imposed generally because the person would have the means to support themselves or, in the case of an employment related exclusion, to discourage a person from moving to an area with low employment prospects. However, the Act exempts certain people from serving the above mentioned periods if undertaking activities specified by the Secretary by legislative instrument. The Specification lists the following activities:

- an activity undertaken by a person as part of Stream C employment services² provided to the person;
- a rehabilitation program,³ or

¹ [Social Services Legislation Amendment Bill 2017](#) which received Royal Assent on 12 April 2017.

² Three levels of service, or streams, are offered in jobactive to meet the needs of job seekers according to their job readiness or barriers to employment. Stream C services are for job seekers who have been assessed as having complex and/or multiple non-vocational barriers and who require integrated assistance which combines pre-employment and employment activities tailored to their individual needs.

³ Under the definition in the Act, a 'rehabilitation program' currently means Disability Employment Services–Disability Management Service, a programme which provides services to customers with temporary or permanent disability, injury or health conditions who are assessed as needing no ongoing support, or flexible ongoing support to retain employment in the open labour market. Explanatory Statement to F2015L01003

- an activity undertaken by a person as part of the Community Development Programme but only where a person would otherwise have been referred to activities listed above if not for the person being placed in the Community Development Programme.

Human rights implications

The Specification engages the following human rights:

- the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the right to an adequate standard of living in Article 11 of ICESCR and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).

The Specification promotes these rights by providing exemptions to certain waiting and non-payment periods applicable under the Act for persons undertaking the activities specified. Persons undertaking the specified activities have been identified as those who may be particularly vulnerable in the labour market and more in need of immediate access to income support. In addition, the activities specified are consistent with the progressive realisation of the right to work in Article 6(2) of ICESCR by providing technical and vocational guidance and training programs, and the rights of persons with disabilities to rehabilitation services and programs (see Article 26 and Article 27 of the CRPD).

The Specification should be considered in the context of other provisions of the Act which allow for exemptions from the waiting and non-payment periods. The Act includes exemptions from certain waiting and non-payment periods on the basis of financial hardship to ensure a person is financially supported (except in relation to the employment-related exclusion under sections 553B and 634). Additionally, the Act allows for a person to be exempt from the employment-related exclusion for reasons that are consistent with human rights and freedoms (see ss 553B(3) and 634(3) of the Act), such as the rights to family life (see article 17 and 23 of the ICCPR) and rights of persons with disability. These reasons include moving to live with or near a family member who has already established a place of residence, moving for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or satisfying the Secretary that the move was reasonable due to an extreme circumstance (for example, the person had been subjected to domestic or family violence in the original place of residence). In all cases where no exemption to the employment-related exclusion applies, a person may move to another area with greater job prospects and their payment may be reinstated.

Conclusion

The Specification is compatible with human rights because it promotes the right to social security and right to an adequate standard of living. To the extent that it may have limited adverse impact on a person's right to social security and an adequate standard of living, the limitation is reasonable, proportionate to the policy objective and for legitimate reasons.

Finn Pratt, Secretary of the Department of Social Services