

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Waiver of Debts - Bereavement Period) Specification 2017

Summary

The *Social Security (Waiver of Debts – Bereavement Period) Specification 2017* is a legislative instrument made under subsection 1237AB(1) of the *Social Security Act 1991* (the Act).

The purpose of the legislative instrument is to specify a class of debts that the Secretary may waive under section 1237AB of Act.

Background

Subsection 1237AB(1) of the Act provides that the Secretary may decide to waive the Commonwealth's right to recover debts arising under the Act that are included in a class of debts specified by the Minister by legislative instrument.

The purpose of this instrument is to specify a class of debts, in relation to which decisions to waive those debts remains a matter for the Secretary's discretion. Having identified a debt falls in a specified class, the Secretary is then able to make a decision based on the circumstances of a particular case.

The class of debts specified by this instrument relates to an overpayment of an income support payment resulting from the delay in the reversion of an income stream to the surviving member of a couple. The delay may result in a lump sum payment to the surviving member to cover the period from reversion to when regular payments commenced.

When an income support recipient dies, the surviving partner may be eligible to receive a lump sum income support bereavement payment (see section 21 of the Act) assessed over 14 weeks. The lump sum income support payment is calculated with reference to the assessable assets and income of the surviving partner immediately after the time of death. Until an income stream owned by the deceased partner transfers to the surviving partner, it is not included in the means test assessment for the lump sum bereavement payment. Excluding the 'not-yet' reverted income stream from the assessment would reduce the lump sum bereavement payment, because the change in the surviving partner's income support rate is not correctly included.

A person may be in a position where they receive a lower lump sum income support bereavement payment than they would have otherwise been entitled, and also have a debt raised against them in relation to overpayment of their personal income support.

Given that an affected person has already received a lower lump sum income support bereavement payment, waiving any debt raised when a lump sum arrears payment is included as assessable income would ensure that the person is in a similar financial position compared to the income stream being counted in their means test assessment for the lump sum bereavement payment. In light of the sensitive circumstances involved, it is considered appropriate to allow the Secretary to waive such a debt. Therefore, this legislative instrument allows the Secretary to waive such debts.

It should be noted that any debt that is incurred after the 14-week bereavement period under the Act has ended would not be waived.

Commencement

This instrument commences on the day after the end of the period for disallowing it.

Consultation

Public consultation has not been undertaken as this instrument is of a purely beneficial character. Consultation has been undertaken with the Department of Human Services.

Retrospectivity

This instrument has prospective operation.

Regulation Impact Statement (RIS)

This instrument is not regulatory in nature and will have no regulatory impact on individuals, business, activity or competition.

Explanation of the Provisions

Section 1 states the name of the legislative instrument.

Section 2 provides that the Specification commences on the day after the end of the period for disallowing it.

Section 3 provides definitions of terms used in the legislative instrument.

Section 4 specifies the class of debts for paragraph 1237AB that may be waived by the Secretary.

The following class of debts is specified by section 4:

- a debt of a person that arises because the person receives a lump sum payment in arrears for an income stream that:
 - relates to a bereavement period or part of that period; and
 - reverted to the person on the death of a primary beneficiary with whom the person was a member of a couple; and
- the debt did not arise because the person knowingly made a false or misleading statement, or knowingly provided false information to the Commonwealth.

Statement of Compatibility with Human Rights

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

Social Security (Waiver of Debts – Bereavement Period) Specification 2017

Subsection 1237AB(1) allows the Minister for Social Services to specify a class of debts that may be waived by the Secretary of the Department of Social Services.

The class of debts specified by this instrument relates to an overpayment of an income support payment resulting from the delay in the reversion of an income stream to the surviving member of a couple during the bereavement period. The delay may result in a lump sum payment to the surviving member to cover the period from reversion to when regular payments commenced.

Human rights implications

The Specification engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must 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 Specification improves the equity of the means test system by ensuring a surviving person's assets and income are fairly and accurately assessed when their partner dies. The Determination is therefore consistent with the promotion of the right of social security.

Conclusion

This Specification supports a person's human right to social security and is therefore compatible with human rights.

The Hon Christian Porter MP, Minister for Social Services