

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social Security (Administration) Act 1999

Social Security (Administration) (Deductible portion — section 123XI) Specification 2019

Purpose

The purpose of this Specification is to specify a percentage that is lower than 100% for the purposes of paragraph 123XI(3)(b) of the Act.

In addition to the power to make this Specification under paragraph 123XI(3)(b) of the Act, 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. Accordingly, the *Social Security (Administration) (Deductible portion – section 123XI) Specification 2009* will be repealed by this Specification.

Background

Part 3B of 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 must deduct amounts from the person's relevant welfare payments and credit those amounts to 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.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to the income management regime. Section 123UC, in that Subdivision, provides that a person is subject to the income management regime at a particular time ('the test time') if, amongst other things: before the test time, a child protection officer of a State or Territory has given the Secretary a written notice requiring that the person be subject to the income management regime; and, at the test time, the State or Territory is a declared child protection State or Territory. Western Australia has been determined to be a declared child protection State or Territory in the *Social Security (Administration) (Declared child protection State or Territory — Western Australia) Determination 2019*. New South Wales, Queensland, South Australia, Victoria and the Northern Territory are also a declared child protection State or Territory under the *Social Security (Administration) (Declared child protection State - New South Wales, Queensland, South Australia and Victoria) Determination 2012* and the *Social Security (Administration) (Declared child protection State or Territory - Northern Territory) Determination 2010*.

Division 5 of Part 3B sets out the amounts that are to be deducted from the specified welfare payments of a person who is subject to the income management regime. Subdivision B of Division 5 applies to a person who is subject to the income management regime under section 123UC of the Act. Section 123XI, in that Subdivision, applies if an instalment of a category I welfare payment is payable to the person. (Section 123XJ applies if a category I

welfare payment is payable to the person as a lump sum payment.) The term ‘category I welfare payment’ is defined in section 123TC of the Act and includes all social security benefits and social security pensions, other prescribed social security, family assistance and education payments, and some payments under the *Veterans’ Entitlements Act 1986*.

Subsection 123XI(3) of the Act sets out the amount that the Secretary must deduct from an instalment of a category I welfare payment (‘the deductible portion’). Subsection 123XI(3) specifies that the deductible portion is 100% or such lower percentage as is specified in a legislative instrument made by the Minister for the purposes of paragraph 123XI(3)(b). Subsection 123XI(4) of the Act allows different percentages to be specified in relation to different category I welfare payments.

Commencement

The Determination commences on the day after it is registered.

Consultation

Income management is in operation until 30 June 2019 and this Specification continues the intent of the income management program. No consultation has been undertaken as there will be no change to the current operation of the program.

Regulatory Impact Analysis

The Specification does not require a Regulatory Impact Statement. The Specification is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of the Specification..

Explanation of provisions

Section 1 provides the name of this instrument is the *Social Security (Administration) (Deductible portion – section 123XI) Specification 2019*.

Section 2 states that the Specification commences the day after it is registered.

Section 3 provides that the Specification is made under paragraph 123XI(3)(b) of the *Social Security (Administration) Act 1999*.

Section 4 defines Act as the *Social Security (Administration) Act 1999* and signposts the definitional term, *category I welfare payment*.

Section 5 specifies that the *Social Security (Administration) (Deductible portion – section 123XI) Specification 2009* is repealed as set out in Schedule 1.

Section 6 of the Specification provides that the lower percentage is specified in relation to all category I welfare payments, other than a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance (‘ABSTUDY LA’), and a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as pensioner education supplement (‘ABSTUDY PES’). ABSTUDY PES is a category I welfare payment by virtue of the definition of category I welfare payment under paragraph 123TC(o) of the Act. ABSTUDY LA is a category H welfare payment that

is also a category I welfare payment by virtue of paragraph 123TC(a) of the definition of category I welfare payment.

The effect of the Specification is that, for the purpose of subsection 123XI(2) of the Act, the deductible portion of an instalment of a category I welfare payment (other than an instalment of a payment type that is mentioned in paragraph 6(a) or, (b) of the Specification) is 70% of the net amount of the instalment (rounded down to the nearest cent). (The term ‘net amount’ is defined in section 123TC of the Act.) The deductible portion for an instalment of ABSTUDY LA or ABSTUDY PES will be 100% as provided for under paragraph 123XI(3)(a) of the Act. This Specification applies to each instalment of each category I welfare payment, other than an instalment of a payment that is mentioned in paragraph 6(a) or (b) of the Specification.

Schedule 1 – Repeals

Item 1 repeals the *Social Security (Administration) (Deductible portion — section 123XI) Specification 2009*.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Deductible portion — section 123XI) Specification 2019

The *Social Security (Administration) (Deductible portion — section 123XI) Specification 2019* (the Specification) 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 Specification details that for a person subject to the child protection measure of income management, the percentage of that person's welfare payment instalment that is restricted is 70 per cent.

Human rights implications

There are a number of human rights income management touches on including the rights of children and the right to:

- self-determination,
- social security
- a private life and
- equality and non-discrimination.

Income management is a budgeting tool to help people meet ongoing needs for themselves and their family. Income management works by directing a proportion of certain income support and family assistance payments to priority items such as food, housing, clothing and utilities. Income management is a tool for child protection authorities to help protect children who are experiencing neglect.

Income management does not change how much a person receives. It just changes the way that they receive part of their welfare payments. People participating in income management receive the rest of their payments in the usual way. Income managed funds cannot be spent on alcohol, tobacco, pornography or gambling.

People can spend their income managed funds by organising direct payments to people and organisations for things like rent, utilities, food or household items, and by using the BasicsCard.

The provision for a reduced restriction rate of 70 per cent for the child protection measure has limited interference with a person's right to a private life and right to pursue freely their economic, social or cultural development and does not detract from the eligibility of a person to receive welfare, nor reduce the amount of a person's social security entitlement (article 17 of the *International Covenant on Civil and Political Rights* and article 1 and 9 of the *International Covenant on Economic, Social and Cultural Rights*). Any limitations on these

rights is reasonable and proportionate and is directly related to the objective of ensuring that welfare payments are directed to the needs of children who are experiencing neglect.

The rights of equality and non-discrimination are provided for in a number of the seven core international human rights treaties to which Australia is a party, most relevantly the *International Covenant on Civil and Political Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination*. The child protection measure of income management is targeted where there are cases of neglect of children and is not applied based on race or ethnic origin.

A restriction rate of 70 per cent for people on the child protection measure of income management ensures that an adequate amount of a person's welfare payment is spent on meeting the priority needs of children. This measure thereby advances the right of children to the highest attainable standard of health and the right of children to adequate standards of living (articles 24, 26 and 27 of the *Convention on the Rights of the Child*).

Conclusion

The Specification is compatible with human rights and will advance the protection of children by ensuring income support payments are spent on priority needs.

To the extent that human rights are limited, those limitations are reasonable, necessary and proportionate to achieving the objectives of income management.

The Hon Paul Fletcher MP, Minister for Families and Social Services