

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Ordinary Waiting Period Exemption) Instrument 2020

Purpose

The *Social Security (Ordinary Waiting Period Exemption) Instrument 2020* (this Instrument) provides an exemption from the ordinary waiting period (OWP) for a person who makes a claim for Parenting Payment, Youth Allowance or Newstart Allowance.

This Instrument also amends the *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017* (2017 Instrument) to include the activity of making a claim for a social security payment and then receiving a social security payment during the period 12 March 2020 to 11 June 2020 as a specified activity for the purposes of sections 500WA, 549CA and 620 of the *Social Security Act 1991* (the Act).

Background

The Australian Government is implementing a range of measures in response to the COVID-19 pandemic. This instrument is part of that response. The instrument will enable recipients to gain immediate access to certain social security payments, rather than having to serve an OWP, where they are otherwise eligible.

The OWP is a period of one week that claimants are required to serve prior to receiving payment, unless they are exempted. The OWP is required to be served at the conclusion of any other applicable waiting period, such as the liquid assets waiting period or newly arrived resident's waiting period.

Some social security payments are subject to an OWP, for example: parenting payment under section 500WA of the Act, youth allowance under section 549CA of the Act, and newstart allowance under section 620 of the Act. However, under these sections, the Secretary of the Department of Social Services is able to exempt a person from the OWP, provided the person is undertaking an activity of a kind specified in a legislative instrument for the purposes of paragraphs 500WA(3), 549CA(4) and 620(3) of the Act. Some activities have been specified for these paragraphs in the 2017 Instrument.

Sections 13 and 14 of the *Social Security (Administration) Act 1999* provide that the date that a person contacts Services Australia can be taken to be the date of the claim in certain circumstances provided they are within a class mentioned in the *Social Security (Administration) (Class of Persons – Intent to Claim) Determination 2018*. This includes a class whereby a person is unable to lodge a claim on the date of contact as they are subject to special circumstances beyond their control. An example of this could be where a person is required to self-isolate as a result of COVID-19.

The Secretary is able to revoke or remake this Instrument at a future date if determined necessary.

Commencement

This Instrument commences on the day that it is registered on the Federal Register of Legislation. Commencement on the day of registration is permitted by section 12 of the *Legislation Act 2003*. The instrument is beneficial in nature and does not adversely affect any person's rights or liabilities in a manner that would disadvantage them.

This Instrument amends the 2017 Instrument. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make an instrument includes the power to vary or revoke the instrument.

Consultation

As this Instrument is beneficial in nature, public consultation has not been undertaken. This Instrument has the effect of exempting people making claims for parenting payment, youth allowance and newstart allowance from the OWP that would otherwise apply.

Services Australia has been consulted in relation to the implementation of this Instrument.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has confirmed that the instrument does not require a Regulatory Impact Statement (OBPR Reference: 26371).

This instrument will operate in a beneficial manner. It is not regulatory in nature, will not impact business activity and will have no, or minimal, compliance cost or competition impact.

Explanation of the provisions

Section 1 provides that the name of this Instrument is the *Social Security (Ordinary Waiting Period Exemption) Instrument 2020*.

Section 2 provides for the commencement of the Instrument. Sections 1 to 5 commence on that day that the Instrument is registered on the Federal Register of Legislation, with section 6 commencing immediately after this.

Section 3 describes the authority for making the instrument as 500WA, 549CA and 620 of the Act.

Section 4 defines 'Act' as the *Social Security Act 1991*.

Section 5 provides that any instrument is specified in the Schedule to this Instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Section 6 provides for the exemptions from the OWP for parenting payment, youth allowance and newstart allowance respectively. The exemption is given by class, which is permitted by section 13 of the *Legislation Act 2003*. The exemptions in section 6 are of a legislative character because they determine the law or alter the content of the law, rather than giving exemptions in relation to particular cases.

Specifically, the class of people undertaking the activity specified paragraph 7 in the 2017 Instrument (as amended by this instrument) are exempted from the OWP under paragraphs 500WA(2)(b), 549CA(3)(b) and 620(2)(b).

This means that a person who lodges a claim for a social security payment in the period commencing on 12 March 2020 and ending on 11 June 2020, and who is eligible for that payment, is exempted from an OWP for parenting payment, youth allowance and newstart allowance.

Schedule 1 – Amendments to other instruments

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

Section 1 amends the 2017 Instrument to insert a new section 7. New section 7 includes the activity of making a claim for a social security payment, and then receiving a social security payment for part or all of the applicable period, being 12 March 2020 to 11 June 2020, as a specified activity for the purposes of paragraphs 500WA(2)(a), 549CA(3)(a) and 620(2)(a) of the Act.

Kathryn Campbell AO CSC, Secretary, Department of Social Services

Statement of Compatibility with Human Rights

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

Social Security (Ordinary Waiting Period Exemption) Instrument 2020

This Instrument 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 (Ordinary Waiting Period Exemption) Instrument 2020* (this Instrument) provides an exemption from the ordinary waiting period (OWP) for a person who makes a claim for parenting payment, youth allowance or newstart allowance.

This Instrument also amends the *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017* (2017 Instrument) to include the activity of making a claim for a social security payment during the period commencing on 12 March 2020 and ending on 11 June 2020, and then receiving a social security payment, as a specified activity for the purposes of sections 500WA, 549CA and 620 of the *Social Security Act 1991* (the Act)

The Australian Government is implementing a range of measures in response to the COVID-19 pandemic. This instrument is part of that response. The instrument will enable recipients to gain immediate access to certain social security payments, rather than having to serve an OWP, where they are otherwise eligible.

The OWP is a period of one week that claimants are required to serve prior to receiving payment, unless they are exempted. The OWP is required to be served at the conclusion of any other applicable waiting period, such as the liquid assets waiting period or newly arrived resident's waiting period.

Some social security payments are subject to an OWP, for example: parenting payment under section 500WA of the Act, youth allowance under section 549CA of the Act, and newstart allowance under section 620 of the Act. However, under these sections, the Secretary of the Department of Social Services is able to exempt a person from the OWP, provided the person is undertaking an activity of a kind specified in a legislative instrument for the purposes of paragraphs 500WA(3), 549CA(4) and 620(3) of the Act. Some activities have been specified for these paragraphs in the 2017 Instrument.

Human rights implications

The Instrument 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 instrument will operate beneficially, because claimants for social security payments will commence receiving payments earlier than would be the case without the instrument. The instrument does not disadvantage any person.

Conclusion

The instrument engages the right to social security but is compatible with human rights as it supports a person's right to social security.

Kathryn Campbell AO CSC, Secretary, Department of Social Services