

EXPLANATORY STATEMENT

Social Security (Administration) Act 1999
Social Security (Administration) (Classes of Exempt Welfare Payment Recipients)
Specification 2020

Purpose

The purpose of the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2020* (this instrument) is to specify classes of persons to be exempt welfare payment recipients for the purposes of section 123UGB of the *Social Security (Administration) Act 1999* (the Act).

This instrument repeals and replaces the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2010* (the 2010 instrument) which would sunset on 1 October 2020 unless repealed before that date.

Background

Part 3B of the Act establishes income management as a measure that supports income support recipients with budgeting assistance and ensures they, and their families and children, have access to essentials such as food, housing, electricity and education.

Subdivision BB of Division 2 of Part 3B of the Act provides exemptions for people who would otherwise become subject to income management under the disengaged youth and long-term welfare payment recipient measures in sections 123UCB and 123UCC of the Act.

Subsection 123UGB(1) of the Act provides that the Secretary may determine that a person is an exempt welfare payment recipient if he or she is satisfied that the person is included in a class of persons specified in a legislative instrument made by the Minister. If the Secretary so determines, the person will be exempt from income management under the disengaged youth and long-term welfare payment recipient measures (as applicable).

Subsection 123UGB(2) of the Act provides the Minister with the power to make a legislative instrument specifying a class of persons to be exempt welfare payment recipients.

This instrument specifies that certain persons receiving special benefit are exempt welfare payment recipients for the purposes of section 123UGB of the Act.

Repeal

This instrument repeals the 2010 instrument which would otherwise sunset on 1 October 2020. This instrument is in substantially the same terms as, and will replace, the 2010 instrument on its repeal.

Authority

This instrument is made under the authority of subsection 123UGB(2) of the Act and specifies the class of persons who are exempt welfare payment recipients for the purposes of section 123UGB of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 is 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.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

Consultation

Consultation with Services Australia, the National Indigenous Australians Agency and the Northern Territory Government has determined that the 2010 instrument was operating effectively and that there was no need for a change in policy.

In late 2019 and early 2020, the Department of Social Services engaged with communities and stakeholders in the Northern Territory on the proposed transition from income management to the Cashless Debit Card. This included 74 community visits and 92 meetings with stakeholders and local organisations.

As part of this engagement, the department discussed current income management policy settings with community members and stakeholders.

Regulation Impact Statement

This instrument does not require a Regulation Impact Statement (OBPR Reference ID: 42974). The instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 provides that the name of this instrument is the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2020*.

Section 2 provides that this instrument commences on the day after this instrument is registered on the Federal Register of Legislation.

Section 3 provides that the authority for making this instrument is subsection 123UGB(2) of the Act.

Section 4 contains definitions of certain terms used in this instrument.

The note to this section indicates that the following terms are defined in the *Social Security Act 1991* (the Social Security Act):

- ***nominated visa holder;***
- ***principal carer;***
- ***receiving;*** and
- ***special benefit.***

Act means the *Social Security (Administration) Act 1999*.

Section 5 provides that Schedule 1 repeals the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2010*.

Section 6 specifies the classes of persons who are exempt welfare payment recipients for the purposes of section 123UGB of the Act.

Paragraph 6(a) refers to a class of persons who are, among other things, receiving special benefit. The disengaged youth and long-term welfare payment recipient measures cover persons who receive 'category E welfare payment'. The term 'category E welfare payment' is defined in section 123TC of the Act and among other payments, includes special benefit.

The main characteristics of 'category E welfare payments' are that they attract participation requirements under the Social Security Act. However, some people who are receiving special benefit will not attract participation requirements under the Social Security Act, and therefore should not be subject to income management for disengaged youth and long-term welfare payment recipient measures.

To ensure that the income management measures apply consistently across welfare payment recipient groups, paragraph 6(a) of this instrument exempts the class of special benefit recipients who do not attract participation requirements. This includes people who receive special benefit but are not required to satisfy the activity test in section 731A of the Social Security Act, and cannot be required by the Secretary to enter into a Special Benefit Employment Pathway Plan.

Examples include people who are paid special benefit in lieu of age pension or disability support pension, or in lieu of a parenting payment. To be a member of the class, the person must also not be the principal carer of a child who is less than six years of age. Other means of becoming exempt from income management exist for persons who are the principal carer of a child (for example, see section 123UGD of the Act).

Schedule 1 – Repeals

Section 1 repeals the *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2010*.

Senator the Hon Anne Ruston, Minister for Families and Social Services

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 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 (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2020* (this instrument) is made under subsection 123UGB(2) of the *Social Security (Administration) Act 1999* (the Act) and replaces the previous *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2010* which would sunset on 1 October 2020.

Subdivision BB of Division 2 of Part 3B of the Act provides for exemptions for people who would otherwise be subject to income management under the disengaged youth and long-term welfare payment recipient measures in sections 123UCB and 123UCC of the Act.

Subsection 123UGB(1) of the Act provides that the Secretary may determine that a person is an exempt welfare payment recipient if the Secretary is satisfied that the person is included in a class of persons specified in a legislative instrument made by the Minister. If the Secretary so determines, the person will be exempt from income management under the disengaged youth and long-term welfare payment recipient measures (as applicable).

Subsection 123UGB(2) of the Act provides the Minister with the power to make a legislative instrument specifying a class of persons to be exempt welfare payment recipients.

The effect of this instrument is to specify classes of persons who are exempt welfare payment recipients for the purposes of section 123UGB of the Act.

Human rights implications

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 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.

This instrument applies to those people subject to income management under the disengaged youth and long-term welfare payment recipient measures who receive a special benefit as defined under the *Social Security Act 1991*.

The purpose of this Instrument is to ensure that the income management measures are applied consistently across welfare payment recipient groups by ensuring a class of people receiving a special benefit can be exempted by the Secretary from income management under the disengaged youth and long-term welfare measures, given they are not subject to legislated participation requirements.

The effect of this Instrument is that certain groups of people would not be placed on income management, therefore their circumstances remain unchanged. As such, this Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Instrument is compatible with human rights as it does not engage any of the applicable rights or freedoms.

Senator the Hon Anne Ruston, Minister for Families and Social Services