EXPLANATORY STATEMENT

Social Security (Administration) Act 1999
Social Security (Administration) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020

Purpose

The purpose of the *Social Security (Administration) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020* (this instrument) is to set out the decision-making principles that the Secretary must comply with, in deciding whether he or she is satisfied that there were no indications of financial vulnerability in relation to a person in the preceding 12 months, for the purposes of paragraph 123UGD(1)(d) of the *Social Security (Administration) Act 1999* (the Act).

This instrument repeals and replaces the *Social Security (Administration) (Exempt Welfare Payment Recipients – Person with Dependent Children) (Indications of Financial Vulnerability Principles 2010* (the 2010 instrument) which would sunset on 1 October 2020 if not repealed earlier.

Background

Part 3B of the Act establishes income management measures that apply to recipients of certain welfare payments. Income management 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 for exemptions for people who become subject to income management under the disengaged youth and long-term welfare payment recipient measures under sections 123UCB and 123UCC of the Act.

Section 123UGD of the Act provides the exemption criteria for persons who are principal carers of a child who is a school age child or younger. The exemption under section 123UGD relates, generally, to responsible parenting practices (particularly in relation to school enrolment and attendance) and no indications of financial vulnerability.

For a person who is the principal carer of a school age child to be exempt under paragraph 123UGD(1)(b) of the Act, the Secretary must be satisfied that, at the test time:

- the child is enrolled at a school, and the child has not had more than five unexplained absences in each of the two school terms ending immediately before the test time; or
- the child is covered by a schooling arrangement that is acceptable under a law of a State or Territory as an alternative to enrolment or attendance at a school (for example, a home-schooling arrangement), and the child's schooling, under that arrangement, is progressing satisfactorily; or

- the child is participating in an activity specified by the Minister, by legislative instrument.

In deciding whether to grant an exemption to a person who is the principal carer of a school age child or younger, the Secretary must be satisfied that the person and/or the children are undertaking the activities required under section 123UGD of the Act. The *Social Security (Administration) (Exempt Welfare Payment Recipients — Principal Carers of a Child) (Specified Activities) Instrument 2015* sets outs specified activities that can be undertaken for the purposes of subparagraph 123UGD(1)(b)(iii) and paragraph 123UGD(1)(c) of the Act.

Paragraph 123UGD(1)(d) of the Act requires that the Secretary must be satisfied that there have been no indications of financial vulnerability in relation to the person in the preceding 12 months. To meet the requirements of paragraph 123UGD(1)(d), the Secretary must comply with the decision-making principles as set out by the Minister in this instrument (subsection 123UGD(5)).

Repeal

This instrument repeals the 2010 instrument which would have 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 123UGD(5) of the Act and sets out the decision-making principles that the Secretary must comply with in deciding whether he or she is satisfied that there have been no indications of financial vulnerability in relation to a person in the preceding 12 months.

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

The instrument does not require a Regulation Impact Statement or a Business Cost Calculator Figure (OBPR Reference 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

<u>Part 1 – Preliminary</u>

Section 1 provides that the name of this instrument is the *Social Security (Administration) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 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 123UGD(5) of the Act.

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

> ***Act*** means the *Social Security (Administration) Act 1999.*
>
> ***Centrepay*** means the voluntary deduction service provided by Services Australia under section 61A of the Act.
>
> ***priority needs*** has the same meaning given by section 123TH of the Act.
>
> ***relevant period*** means, in relation to a person, the 12-month period mentioned in paragraph 123UGB(1)(d) of the Act as it applies to that person.
>
> ***social security entitlement*** has the same meaning given by subsection 23(1) of the *Social Security Act 1991*.
>
> ***specified dependants*** means, in relation to a person, the following persons:
>
> - a child of the person;
> - the person's partner;
> - any other dependants of the person.

strategies is defined to include:

- tools (however described); and
- training (however described).

Subsection 4(2) provides the definition of ***financial exploitation*** for the purposes of section 7 of this instrument.

A person is experiencing ***financial exploitation***, if another person, or any entity (whether or not it has a legal personality), has acquired, has attempted to acquire, or is attempting to acquire, possession of, control of or the use of, or an interest in, some or all of the first person's financial resources, through the use of undue pressure, harassment, violence, abuse, deception, duress, fraud and exploitation.

Section 5 provides that the decision-making principles that govern the Secretary's decision under paragraph 123UGD(1)(d) of the Act are set out in Part 2 of this instrument.

Section 6 provides that Schedule 1 repeals the *Social Security (Administration) (Exempt Welfare Payment Recipients – Person with Dependent Children) (Indications of Financial Vulnerability Principles 2010*.

<u>Part 2 – Decision-Making Principles</u>

Section 7 provides that the Secretary must consider whether the person experienced financial exploitation during the relevant period.

Section 8 provides that the Secretary must consider what priority needs the person, and the person's children, partner and other dependants (if applicable), had during the relevant period and whether the person was applying appropriate resources to meet some or all of those priority needs during the relevant period.

This consideration reflects the expectation that a person will use their income, including income in the form of income support and family assistance payments, to meet their priority needs and the needs of their dependents. However, paragraph 8(b) explicitly recognises that the goal of meeting all priority needs may not always be met where a person has limited financial resources.

Section 9 provides that the Secretary must also consider what strategies (however described) the person used, during the relevant period, to manage their financial resources, and whether it is likely that the person will continue to use those strategies (or similar strategies) to manage their financial resources in the foreseeable future.

The term 'strategies' is defined in section 4 of this instrument as including tools and training. Section 9 also notes a number of examples of 'strategies' that a person might use to manage their financial resources. Additional examples include: using an online budgeting tool; visiting a financial counsellor for assistance in setting up or revising a personal or household budget.

Section 10 provides that the Secretary must consider whether the person has made requests to Services Australia for an urgent payment of their regular welfare payment during the relevant period.

Instalments of welfare payments are usually paid to a person once a fortnight, or once a week, on a regular cycle (for example, a person's regular welfare payment payday may be every Wednesday fortnight). However, a person can ask Services Australia to pay them a part of their welfare payment before their regular payday: such payments are commonly referred to as 'urgent payments', which are made under section 51 of the Act. The remainder of the person's welfare payment will then be paid to them on their regular payday. Services Australia only makes urgent payments where it is determined that the person in question is experiencing financial hardship.

Under subsection 10(1), if the person has asked Services Australia for one or more urgent payments, the Secretary must consider the reasons that the person gave to Services Australia for the request on each occasion on which they sought an urgent payment. If the person sought an urgent payment, and the request was refused by Services Australia, the Secretary must also consider Services Australia's reasons for refusing the request.

Subsection 10(2) provides that the Secretary must consider how many times (if ever) the person has made requests to Services Australia to change their regular welfare payment payday. As described above, welfare payment recipients generally are paid their entitlements in a regular fortnightly or weekly cycle. A welfare payment recipient may ask Services Australia to change the day on which their entitlement is paid. For example, a person whose regular welfare payment payday is every Wednesday may ask Services Australia to change the payday to Friday so that the Services Australia payday coincides with the person's employment payday. The change may be a temporary change (that is, for a specified period), or the change may be made permanently (usually until a further request by the person). Under subsection 10(2), the Secretary must consider the reasons that the person gave to Services Australia for each change request.

Schedule 1 – Repeals

Section 1 repeals the *Social Security (Administration) (Exempt Welfare Payment Recipients – Person with Dependent Children) (Indications of Financial Vulnerability Principles 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) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020

The 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) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020* (this instrument) is made under subsection 123UGD(5) of the *Social Security (Administration) Act 1999* (the Act) and replaces the previous *Social Security (Administration) (Exempt Welfare Payment Recipients – Person with Dependent Children) (Indications of Financial Vulnerability Principles 2010* (the 2010 instrument), which would otherwise sunset on 1 October 2020. This instrument is substantially in the same terms as the 2010 instrument.

The effect of this instrument is to set out the decision-making principles which the Secretary must comply with when considering whether a person should be exempt from income management under the disengaged youth and long-term welfare payment recipient income management measures under sections 123UCB and 123UCC of the Act.

Section 123UGD of the Act provides the exemption criteria for persons who are principal carers of a child who is a school age child or younger. The exemption under section 123UGD relates, generally, to responsible parenting practices (particular in relation to school enrolment and attendance) and no indications of financial vulnerability. Subsection 123UGD(5) provides for the Minister to make decision-making principles that the Secretary must comply with, in deciding whether he or she is satisfied that there were no indications of financial vulnerability in relation to a person in the preceding 12 months, for the purposes of paragraph 123UGD(1)(d) of the Act.

Human rights implications

<u>The right to social security</u>

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises *'the right of everyone to social security, including social insurance'*.

The UN Committee on Economic, Social and Cultural Rights has stated that implementing this right requires a country to, within its maximum available resources, 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'.

This instrument sets out the decision-making principles that the Secretary must comply with, in deciding whether there were any indications of financial vulnerability experienced by income management recipients who are principal carers of a child (school aged or younger), over the past 12 months. This allows the Secretary to exempt the recipient from income management under the disengaged youth and long-term welfare payment measures if they satisfy these decision making principles.

This instrument does not reduce or limit the right to social security but rather sets out a mechanism to allow persons who are principal carers of a child to demonstrate they are using a portion of their welfare payments to meet priority needs of their child such as living costs and educational expenses, as well as having adequate budgeting strategies in place to manage their financial resources in the long term. The principles contained in this Instrument require the Secretary to consider matters directly relevant to the objects of income management under the Act, including to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependents;
- help affected welfare payment recipients to budget so that they can meet their priority needs; and
- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse by others seeking access to their welfare payments.

The right to self-determination

Article 1 of the ICESCR states that ‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.

The effect of this instrument is that a person caring for a child must be able to demonstrate they are meeting priority needs, are in full control of their financial resources (that is, are not experiencing financial exploitation) and have appropriate strategies in place for managing their financial resources. Where the person is able to demonstrate this, as well as meet the other exemption criteria listed in section 123UGD of the Act, the person is able to be exempted from income management.

While this instrument does limit a person’s ability to freely dispose of all their resources (as income managed funds can only be spent on priority items), this is directly related to the objects of income management. This instrument will not impact on or interfere with a person’s right to pursue freely their economic, social or cultural development.

The right to an adequate standard of living

Article 11(1) of the ICESCR states that everyone has the right to ‘an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’ and that ‘appropriate steps’ be taken to ‘ensure the realization of this right’.

The decision making principles in this instrument aim to advance this right by taking into account whether the person on income management is meeting priority needs such as food, clothing, and shelter for themselves, their child and other dependants. In addition, in order for a welfare recipient to satisfy that they have not been financially vulnerable in the previous 12 months, they must be able to demonstrate they have budgeting strategies in place to manage their finances and are able to sustain this adequate standard of living for the foreseeable future.

The rights of children

By ensuring that a portion of income support payments is used to cover essential goods and services, income management can improve living conditions for the children of income support recipients.

Under this instrument, the Secretary must consider whether the priority needs of a child of the person applying for the income management exemption are being met. It thereby advances the right of children to benefit from social security, the right of children to the highest attainable standard of health, the right of children to adequate standards of living and the right to an education (articles 26, 24, 27 and 28 of the Convention on the Rights of the Child, respectively).

Conclusion

This instrument is compatible with human rights. It advances the protection of human rights by specifying the financial vulnerability principles that the Secretary must take into account, in order to exempt the principal carer of a child from income management. It assists in the protection of human rights, in particular the rights of a child by ensuring that principal carers are meeting the priority needs of their dependants and providing them with an adequate standard of living.

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