

## **EXPLANATORY STATEMENT**

### *Social Security (Administration) Act 1999* *Social Security (Administration) (Deductible portion — section 123XPA) Specification* *2020*

#### **Purpose**

The purpose of the *Social Security (Administration) (Deductible Portion — section 123XPA) Specification 2020* (this instrument) is to specify the deductible portion of an instalment of a category I welfare payment for the purposes of subsection 123XPA(2) of the *Social Security (Administration) Act 1999* (the Act).

This instrument repeals and replaces the *Social Security (Administration) (Deductible Portion — section 123XPA) Specification 2010* (the 2010 instrument) which would sunset on 1 October 2020 unless repealed earlier.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.

If a person is subject to income management 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, for the purpose of taking actions directed to meeting the priority needs of the person or their dependants.

Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to income management.

Section 123UFA of the Act provides that a person is subject to income management at a particular time if a voluntary income management agreement is in force in relation to the person.

Section 123UM of the Act provides that a person may enter into a written agreement with the Secretary under which the person agrees to be voluntarily subject to income management throughout the period the agreement is in force.

Voluntary income management helps 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. If people receive a relevant income support payment, they can choose to participate in voluntary income management.

In order for a person to enter into a voluntary income management agreement, the person must be an eligible recipient of a relevant welfare payment, and their usual place of residence must be in a declared voluntary income management area.

The following instruments determine the declared voluntary income management areas in Western Australia, New South Wales, Queensland, South Australia, Victoria and the Northern Territory:

- *Social Security (Administration) (Declared voluntary income management areas — Western Australia) Determination 2011;*
- *Social Security (Administration) (Declared voluntary income management areas — New South Wales, Queensland, South Australia and Victoria) Determination 2012; and*
- *Social Security (Administration) (Declared voluntary income management areas — Northern Territory) Determination 2020.*

Division 5 of Part 3B sets out the amounts that are to be deducted from the prescribed welfare payments of a person who is subject to income management. Subdivision DA of Division 5 applies to a person who is subject to income management under section 123UFA of the Act.

Section 123XPA of the Act applies if an instalment of a category I welfare payment is payable to the person.

Subsection 123XPA(2) of the Act provides that the Secretary must deduct a deductible portion from an applicable category I welfare payment and credit this amount to the Income Management Record and the person's income management account.

Subsection 123XPA(3) of the Act specifies that the deductible portion is 70 per cent or such other percentage as is specified in a legislative instrument made by the Minister for the purposes of paragraph 123XPA(3)(b).

Subsection 123XPA(4) of the Act allows different percentages to be specified in the instrument in relation to different category I welfare payments.

The effect of this instrument is that, for the purposes of income management under Part 3B of the Act, where a voluntary income management agreement is in force for a person, instalments of certain welfare payments payable to that person would be subject to the deductible portions specified in this instrument (generally 50 per cent).

Most people who become subject to income management will have 50 per cent of their regular (instalment) payments, and 100 per cent of lump sum payments, income managed.

This instrument provides that, for the purposes of the voluntary income management measure, the deductible portion for an instalment of a category I welfare payment (other than a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance (ABSTUDY LA) or a payment under the ABSTUDY scheme that includes an amount identified as pensioner education supplement (ABSTUDY PES)) is to be 50 per cent. This ensures that people who choose to be income managed under the voluntary income management measure have the same discretion over their spending as people who are subject to compulsory income management.

This instrument will not affect the total amount of the welfare payment paid to each person, and so should not necessitate a change in a person's established budget. Services Australia will work with each affected individual to assist them to ensure their priority needs continue to be met.

As applies at present, where priority needs exceed income managed funds, customers will be assisted to use facilities such as Centrelink to direct their discretionary funds to pay the balance, depending on any other identified priority needs.

### Repeal

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

### Authority

This instrument is made under the authority of paragraph 123XPA(3)(b) of the Act and sets out the amount that the Secretary must deduct from an instalment of a category I welfare payment for the purposes of subsection 123XPA(2). 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.

Subsection 123XPA(4) of the Act permits the instrument to specify different percentages for different category I welfare payments.

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

**Section 1** provides that the name of this instrument is the *Social Security (Administration) (Deductible portion — section 123XPA) 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 paragraph 123XPA(3)(b) 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 *Student Assistance Act 1973* and the *Social Security Act 1991*:

- ABSTUDY;
- living allowance; and
- pensioner education supplement.

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

**Section 5** provides that Schedule 1 repeals the *Social Security (Administration) (Deductible Portion — section 123XPA) Specification 2010*.

**Section 6** specifies the deductible portions for the purposes of subsection 123XPA(3)(b) of the Act.

Subsections 6(a) and (b) provide that the deductible portion of an instalment of a category I welfare payment (other than ABSTUDY LA or ABSTUDY PES) is 50 per cent, while the deductible portion of an instalment of ABSTUDY LA or ABSTUDY PES is 100 per cent.

Section 123XPA of the Act applies if an instalment of a category I welfare payment is payable to the person. This is different to section 123XPB of the Act, which 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*.

To ensure that people who choose to be income managed under the voluntary income management measure have the same discretion over their spending as people who are subject to compulsory income management under the scheme, subsection 6(a) provides that, for the purposes of the voluntary income management measure, the deductible portion for an instalment of a category I welfare payment (other than ABSTUDY LA and ABSTUDY PES) is to be 50 per cent.

This instrument will not affect the total amount of the welfare payment paid to each person, and so should not necessitate a change in a person's established budget. Services Australia will work with each affected individual to assist them to ensure their priority needs continue to be met.

### **Schedule 1 – Repeals**

**Section 1** repeals the *Social Security (Administration) (Deductible Portion — section 123XPA) 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) (Deductible portion — section 123XPA) Specification 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) (Deductible portion — section 123XPA) Specification 2020* (this instrument) is made under paragraph 123XPA(3)(b) of the *Social Security (Administration) Act 1999* (the Act) and replaces the previous *Social Security (Administration) (Deductible portion — section 123XPA) Specification 2010* (the 2010 instrument), which is due to sunset on 1 October 2020. This instrument is substantially in the same terms as the 2010 instrument.

The instrument sets out percentages that apply to the welfare payments of a person who is participating in voluntary Income Management. Paragraph 123XPA(3)(b) 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 123XPA(3) specifies that the deductible portion is 70 per cent or such other percentage as is specified in a legislative instrument made by the Minister for the purposes of paragraph 123XPA(3)(b). Subsection 123XPA(4) of the Act allows different percentages to be specified in relation to different category I welfare payments.

This instrument specifies that a recipient subject to voluntary Income management who receives a Category I welfare Payment (other than a payment of ABSTUDY living allowance (ABSTUDY LA) or a payment of pensioner education supplement (ABSTUDY PES)), will have 50 per cent of their payment deducted to acquire essential items such as living and education expenses. For a recipient who receives a Category I welfare payment that consists of an instalment of ABSTUDY LA or ABSTUDY PES, then the deductible portion for essential items will be 100 per cent.

#### **Human rights implications**

Income management touches on a number of human rights including the rights of children and the right to:

- self-determination;
- social security; and
- an adequate standard of living.

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 managed funds cannot be spent on alcohol, tobacco, pornography or gambling.

Income management can be voluntary or compulsory. This instrument applies to those people who receive a relevant income support payment and choose to participate in voluntary income management. The deductible portion of income managed funds set aside under this instrument ensures people who choose to participate in voluntary income management have the same discretion over their spending as those people who are subject to compulsory income management. A person who chooses to volunteer for income management must participate for at least 13 weeks. After that, they can cease income management at any time.

This instrument does not reduce a person's right to self-determination or limit a person's social security entitlement under Article 1 and 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Participation in voluntary income management is predicated on a person self-identifying that they would benefit from having between 50 to 100 per cent of their welfare payments set aside to pay for their priority needs. While this measure does limit a person's ability to freely dispose of all of their resources (as income managed funds can only be spent on priority items), it does not impact on their right to freely pursue their economic, social or cultural development. Income management does not change how much a person receives, it just changes the way that they receive a portion of their welfare payments.

This instrument advances the right to an adequate standard of living under Article 11(1) of the ICESCR by ensuring that money is available for priority goods such as food, clothing, education and housing, and provides a tool to help people budget. Income management can also help stabilise people's lives, so they can care for their children, and join or return to the workforce and ultimately end the cycle of welfare dependence.

A restriction of 50 to 100 per cent of welfare payments for a person on the voluntary income management measure ensures that an adequate amount of a person's welfare payment is spent on meeting the priority needs of their children and other dependants. This instrument thereby advances the right of children to the highest attainable standard of health, to benefit from social security, to adequate standards of living and to education (Articles 24, 26, 27 and 28 of the *Convention on the Rights of the Child*).

## **Conclusion**

This instrument is compatible with human rights. It advances the protection of human rights by specifying that welfare recipients on voluntary income management have a portion of their payments restricted to spend on priority goods such as food, housing, clothing and utilities so they can continue to meet their priority needs and improve their standard of living.

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