

EXPLANATORY STATEMENT

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

Social Security (Administration) Act 1999

*Social Security (Administration) (Weekly Payments – Class of Persons)
Specification 2020*

Purpose

Subsection 43(3B) of the *Social Security (Administration) Act 1999* (the Act) allows the Minister for Families and Social Services to specify, by legislative instrument, the class of persons for the purposes of subsection 43(3A) of the Act.

Under subsection 43(3A) of the Act, the Secretary of the Department of Social Services (DSS) is able to determine that a person who is a member of a specified class should be paid their social security period payment, in respect of a 14-day instalment period, in two weekly payments.

The effect of the *Social Security (Administration) (Weekly Payments – Class of Persons) Specification 2020* (this instrument) is to specify the class of persons for the purpose of making weekly payments of a social security periodic payment under Division 4, Part 3 of the Act.

Background

The Australian Government provides financially vulnerable or significantly disadvantaged customers with the option of receiving income support payments weekly instead of each fortnight. This classification encompasses Australia's most vulnerable people including those who are experiencing homelessness or at risk of being homeless. For example, people experiencing homelessness includes people who are living on the streets or staying in cars while at risk of homelessness involve a range of factors or triggers that can contribute to homelessness, such as financial or housing affordability stress or family and domestic violence.

In most cases, social security payments are paid fortnightly in arrears in respect of a 14-day instalment period. However, subsection 43(3A) of the Act allows the Secretary of DSS to determine that a person is to receive their payment in 2 payments, that is to be paid weekly, in arrears. The Secretary may only make such a determination if the person is in a class of persons specified by the Minister for Families and Social Services in a legislative instrument made under subsection 43(3B) of the Act.

This instrument is beneficial in nature and is intended to assist a broad class of people who would benefit from having their social security periodic payment paid weekly rather than fortnightly. In addition, this instrument ensures that a person must consent to be paid weekly before the Secretary can determine that a person is to receive their social security periodic payment on a weekly basis.

The *Social Security (Administration) (Weekly Payments – Class of Persons) (FaHCSIA) Specification 2010* (the 2010 FaHCSIA instrument) and the *Social Security (Administration) (Weekly Payments – Classes of Persons) (DEEWR) Specification 2010* (the 2010 DEEWR instrument) are due to sunset on 1 October 2020.

This instrument is in substantially the same terms as, and will replace the 2010 FaHCSIA instrument and the 2010 DEEWR instrument.

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* and is subject to disallowance.

Commencement

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

Consultation

Consultation has occurred with Economic Justice Australia and the Australian Council of Social Service.

Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement (OBPR Reference: 42764).

Availability of merits review

Merits review is available for decisions made under subsection 43(3A) of the Act (with decisions under that subsection being made with reference to the class of persons specified in this instrument). Decisions can be subject to an internal merits review by an Authorised Review Officer and then, if the recipient remains unsatisfied, they can seek merits review by the Administrative Appeals Tribunal (see Parts 4 and 4A of the Act).

Explanation of the provisions

Section 1 provides that the name of this instrument is the *Social Security (Administration) (Weekly Payments – Class of Persons) 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 43(3B) of the Act.

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

Act is defined to mean the *Social Security (Administration) Act 1999*.

Section 5 in conjunction with **Schedule 1** operates to repeal the 2010 DEEWR instrument and the 2010 FaHCSIA instrument.

Section 6 specifies the class of persons for the purpose of making weekly payments.

Subsection 6(1) specifies the class of persons for the purposes of subsection 43(3A) of the Act as the following:

- the person is an Australian resident living in Australia (subsection 7(2) of the *Social Security Act 1991* provides a definition of 'Australian resident');
- the person is receiving one of the social security period payments set out in subsection 6(2) (discussed below);
- the person would benefit from having their social security periodic payment paid as described in subsection 43(3A) of the Act (including in the circumstances specified in subsection 6(3) discussed below);
- the person has requested the Secretary that they be paid the total amount of their social security periodic payment in respect of a 14-day instalment period in two weekly payments as provided by subsection 43(3A) of the Act and has not revoked that request.

Subsection 6(2) sets out the social security periodic payments for the purposes of subsection 6(1):

- age pension;
- disability support pension;
- carer payment;
- special benefit;
- widow allowance;
- parenting payment;
- youth allowance
- austudy payment;
- partner allowance; and
- jobseeker payment.

Subsection 6(3) sets out non-exhaustively, the circumstances under which a person is taken to benefit from having their social security periodic payment paid weekly. Those circumstances are that the person:

- does not have access to safe, secure and adequate housing (including in the circumstances specified in subsection 6(4) discussed below),

- is using emergency accommodation or is a refugee; or
- is financially vulnerable and significantly disadvantaged.

Subsection 6(4) sets out, non-exhaustively, the circumstances under which a person is taken to have inadequate access to safe and secure housing. This definition is derived from that of 'homeless' provided in the *Supported Accommodation Assistance Act 1994*, and is intended to encompass the particular characteristics or incidents of a person's accommodation that may adversely affect them or place them at risk.

Whether a person is financially vulnerable and significantly disadvantaged is not defined in the instrument, as it is intended to be a broad and flexible concept examining many aspects of a person's circumstances. Examples of matters that decision-makers will be asked to consider include whether:

- the person has suffered a recent traumatic relationship breakdown, particularly if domestic or family violence was involved;
- the person or their partner or a family member has a diagnosed mental illness, acquired brain injury or acute cognitive impairment;
- the person or their partner or a family member has a gambling, substance or alcohol dependence that is severe enough to impede the person from managing their finances on a fortnightly basis;
- the person has ongoing budgeting difficulties with his or her fortnightly payment arrangements;
- the person has suffered an unforeseen event that has substantially reduced his or her income or requires significant additional expenditure; or
- the person has previously been offered other services and referrals which have failed to stabilise the person's financial circumstances.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Weekly Payments – Class of Persons) 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 Australian Government provides financially vulnerable or significantly disadvantaged customers with the option of receiving income support payments weekly instead of each fortnight. This classification encompasses Australia's most vulnerable people including those who are experiencing homelessness or at risk of being homeless. For example, people experiencing homelessness includes people who are living on the streets or staying in cars while at risk of homelessness involve a range of factors or triggers that can contribute to homelessness, such as financial or housing affordability stress or family and domestic violence.

In most cases, social security payments are paid fortnightly in arrears in respect of a 14-day instalment period. However, subsection 43(3A) of the *Social Security (Administration) Act 1999* (the Act) allows the Secretary of DSS to determine that a person is to receive their payment in 2 payments, that is to be paid weekly, in arrears. The Secretary may only make such a determination if the person is in a class of persons specified by the Minister for Families and Social Services in a legislative instrument made under subsection 43(3B) of the Act.

This Instrument is beneficial in nature and is intended to assist a broad class of people who would benefit from having their social security periodic payment paid weekly rather than fortnightly. In addition, this instrument ensures that a person must consent to be paid weekly before the Secretary can determine that a person is to receive their social security periodic payment on a weekly basis.

Human rights implications

This legislative instrument engages the following rights:

- The right of everyone to social security in article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continual improvement of living conditions in article 11 of the International Convention of Economic, Social and Cultural Rights.
- The rights of the child in article 26 of the Convention of Rights of the Child

The instrument promotes articles 9 and 11 by increasing the frequency of social security payments for an individual. This assists in providing an adequate standard of living by increasing an individual's ability to meet urgent needs and assists individuals with budgeting of payments ability to achieve an adequate standard of living.

The instrument promotes article 26 by increasing the frequency of payments to recipients with children. This increased access to payment has a flow on effect to children of recipients by increasing the ability to manage urgent needs and budgeting of family finances.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights for vulnerable groups in society.

Anne Ruston, Minister for Families and Social Services