

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Education, Skills and Employment

Social Security (Administration) Act 1999

Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) Specification 2021

AUTHORITY

This instrument is made under subsection 42S(5) of the *Social Security (Administration) Act 1999* (the Act).

PURPOSE AND OPERATION

The *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) Specification 2021* (the Instrument) is made by the Secretary of the Department of Education, Skills and Employment (the Department) under subsection 42S(5) of the Act.

The purpose of the Instrument is to specify certain classes of people who may have their unemployment non-payment period ended if continuing to serve the full period would cause the person to be in severe financial hardship.

The Instrument applies to job seekers receiving participation payments who are declared program participants. These participants are currently specified as participants of the Community Development Program (CDP) under the *Social Security (Declared Program Participant) Determination 2018*. These job seekers are subject to the Job Seeker Compliance Framework (under Division 3A of the Act). If these job seekers voluntarily leave employment or are dismissed due to misconduct, they may be subject to an eight week unemployment non-payment period. If the job seeker received relocation assistance in relation to the employment in the previous six months, then the job seeker may be subject to a twelve week unemployment non-payment period rather than the standard eight week period.

The Act also specifies that job seekers will not be subject to unemployment non-payment period if the Secretary is satisfied that the voluntary act was reasonable. This ensures that job seekers will not be penalised if voluntarily leaving employment is reasonable in the circumstances.

For example, it would be reasonable for a person to voluntarily leave employment if they have developed an illness, disability or injury that would be aggravated by continuing to perform the work and the employer is not able to offer reasonable adjustment. As another example, it would be reasonable for a person to voluntarily leave employment if misconduct by another worker or workers made it unsafe for them to continue.

Job seekers in other employment services (such as jobactive, Disability Employment Services, or ParentsNext) are subject to the Targeted Compliance Framework (under Division 3AA of the Act) and are therefore subject to different compliance arrangements for voluntary unemployment. The Instrument therefore does not relate to them.

Section 42S of the Act provides that a person's participation payment is not payable for a period of eight weeks where the Secretary determines that the person is unemployed as a result of a voluntary act of the person or as a result of the person's misconduct as an employee. Where the person received relocation assistance in relation to the employment in the previous six months, then the non-payment period is twelve weeks. Subsection 42S(4) provides that the Secretary may end a person's unemployment non-payment period if (a) serving the non-payment period would cause the person to be in severe financial hardship; and (b) the person is in a class of persons specified by legislative instrument.

The classes of people affected by this Instrument are job seekers in the CDP who:

- have a dependent child;
- have significant family or caring responsibilities;
- are unable to afford necessary medical treatment;
- have a psychological or mental illness or impairment; and
- do not have access to adequate housing.

Inclusion in the Instrument will ensure that the Secretary can end unemployment non-payment periods imposed on these classes of people.

The Instrument repeals and replaces two previous legislative instruments which were due to sunset on 1 October 2021, the *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (FaHCSIA) and Specification (No. 1) 2009* (FaHCSIA Specification) and the *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (DEEWR) Specification (No. 1) 2009* (DEEWR Specification). The Instrument maintains the same classes of people as provided in the sunseting instruments as the classes remain suitable and ensure that the Secretary can end unemployment non-payment periods in appropriate cases.

The sunseting of the DEEWR and FaHCSIA specifications was deferred to 1 October 2021 by the *Legislation (Deferral of Sunseting—Social Security (Administration) (Ending Unemployment Non-payment Periods—Classes of Persons) Specifications) Certificate 2019*. The sunseting was deferred to allow the Government to pursue proposed reform to the CDP. The Government has now announced a new remote engagement program will commence in 2023 to replace CDP. The new remote engagement program will be co-designed with Indigenous Australians to better tailor the support job seekers need to find and secure work as the economy recovers. While the new remote engagement program is being trialled and proposed legislative reforms pursued, the Instrument is being remade to ensure that there is no gap in application and unemployment non-payment periods can be ended in accordance with current policy.

The DEEWR and FaHCSIA specifications enacted the same policy, but applied to different payments due to the Administrative Arrangements Orders in place in 2009 when these instruments were made. Policy for Special Benefit was a responsibility of the then Department of Families, Housing, Community Services and Indigenous Affairs, while policy for other participation payments was a responsibility of the then Department of Education, Employment and Workplace Relations. Accordingly, the FaHCSIA specification related to ending unemployment non-payment periods for Special Benefit recipients and the DEEWR specification applied to ending unemployment non-payment periods for other participation payment recipients. Currently the Department of Education, Skills and Employment is responsible for compliance policy for all participation payment recipients. As such, only one specification is needed.

REGULATORY IMPACT

This Instrument is not regulatory in nature, will not impact on business activity, compliance costs nor will it have a competition impact.

COMMENCEMENT

This Instrument will commence on the day after the Instrument is registered on the Federal Register of Legislation.

CONSULTATION

The Department has consulted with the National Indigenous Australians Agency (NIAA) in relation to making this Instrument and in relation to the Remote Engagement Program which will replace the Community Development Program (CDP) from 2023. The Australian Government is committed to ongoing consultation over the next two years on the design of the new program. In partnership with remote communities, the Government will co-design and trial different approaches that respond to the various needs of remote communities across a small number of pilot sites. The results of these trials over the next two years will feed into the design of the new program.

As this Instrument only applies to a very limited cohort and continues the existing policy while new approaches are being piloted, the Department considers further consultation is not necessary.

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) Specification 2021

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 Instrument

The *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) Specification 2021* ('the Instrument') is made by the Secretary of the Department of Education, Skills and Employment ('the Secretary') under subsection 42S(5) of the *Social Security (Administration) Act 1999* (the Act).

The Instrument applies to job seekers receiving participation payments who are declared program participants – currently specified as participants of the Community Development Program) under the *Social Security (Declared Program Participant) Determination 2018*. These job seekers are subject to the Job Seeker Compliance Framework (under Division 3A of the Act). If these job seekers voluntarily leave employment or are dismissed due to misconduct they may be subject to an eight week unemployment non-payment period. If the job seeker received relocation assistance in previous six months in relation to the employment, then the job seeker may instead be subject to a twelve week unemployment non-payment period.

The Act also specifies that job seekers will not be subject to unemployment non-payment period if the Secretary is satisfied that the voluntary act was reasonable. This ensures that job seekers will not be penalised if voluntarily leaving employment is reasonable in the circumstances.

For example, it would be reasonable for a person to voluntarily leave employment if they have developed an illness, disability or injury that would be aggravated by continuing to perform the work and the employer is not able to offer reasonable adjustment. As another example, it would be reasonable for a person to voluntarily leave employment if misconduct by another worker or workers made it unsafe for them to continue.

The purpose of the Instrument is to specify certain classes of people that may have their unemployment payment period ended if continuing to serve the full period would cause the person to be in severe financial hardship.

Job seekers in other employment services (such as jobactive, Disability Employment Services, or ParentsNext) are subject to the Targeted Compliance Framework (under Division 3AA of the Act), and are subject to different compliance arrangements for voluntary unemployment. The Instrument therefore does not apply to them.

The Instrument replaces two previous legislative instruments, the *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons)*

(FaHCSIA) and Specification (No. 1) 2009 (FaHCSIA Specification) and the Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (DEEWR) Specification (No. 1) 2009 (DEEWR Specification), both of which were due to sunset on 1 October 2021.

The classes of people affected by this Specification are job seekers in the CDP who:

- have a dependent child;
- have significant family or caring responsibilities;
- are unable to afford necessary medical treatment
- have a psychological or mental illness or impairment; and
- do not have access to adequate housing.

Inclusion in the Instrument will ensure that the Secretary can end unemployment non-payment periods imposed on these classes of people.

Human rights implications

The Instrument engages the following human rights:

- the right to social security in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to an adequate standard of living in Article 11 of the ICESCR.

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires parties to establish a social security system and, within their maximum available resources, ensure access to a social security scheme that provides 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 right to social security is important in realising many of the other rights in the ICESCR, including the right to an adequate standard of living under Article 11. Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living, including adequate food, water and housing, and to the continuous improvement of living conditions.

Article 4 of the ICESCR provides that countries may only subject economic, social and cultural rights to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The Committee on Economic, Social and Cultural Rights has stated that such limitations must be proportionate and the least restrictive alternative should be adopted where several types of limitations are available. Where such limitations are permitted, they should be of limited duration and subject to review.

An unemployment non-payment period applies if a person became unemployed due to a voluntary act or became unemployed because of misconduct as an employee, which means that a participation payment is not payable to the person for 8 weeks. An unemployment non-payment period of 12 weeks applies if the person received relocation assistance in previous six months in relation to the employment which they subsequently became unemployed as a result of a voluntary act or misconduct.

The purpose of the Instrument is to specify certain classes of people, for whom an unemployment non-payment period that applied because the person was unemployed as a result of a voluntary act or misconduct, may be ended by the Secretary. In doing so, the Instrument increases access to social security, and, therefore, promotes the rights to social security and an adequate standard of living.

Conclusion

The Instrument is compatible with human rights because it promotes the rights to social security and an adequate standard of living.

Explanation of Provisions

Section 1 states the name of the Instrument as the *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) Specification 2021*.

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

Section 3 states that the Instrument is made under subsection 42(5) of the *Social Security (Administration) Act 1999*.

Section 4 provides the definitions for this Instrument. ‘Act’ means the *Social Security (Administration) Act 1999*. ‘Dependent child’ has the meaning given by section 5 of the *Social Security Act 1991 (Social Security Act)*. Subsections 5(2) to (9) of the Social Security Act provide that a young person who is either under 16 years or 16 to 21 years, is a dependent child for the purposes of the Act.

Section 5 provides that each instrument in the Schedule is repealed as set out in the Schedule.

Section 6 provides the specification of classes of persons.

Subsection 6 (1) specifies that the classes of persons are persons who:

- have a dependent child;
- have significant family or caring responsibilities;
- have an illness, impairment or condition that requires treatment and who cannot afford the treatment; or
- have a cognitive, neurological, psychiatric or psychological impairment or mental illness that has been established by medical evidence; and
- do not have access to safe, secure and adequate housing, or are using emergency accommodation or a refuge.

The specified classes of persons the persons whose unemployment non-payment period may be ended if continuing to serve the full period would cause the person to be in severe financial hardship.

Subsection 6(2) explains the circumstances where a person is taken not have access to safe, secure, and adequate housing.

Schedule 1 repeals the *Social Security (Administration) (Ending Unemployment Non-payment Periods – Classes of Persons) (FaHCSIA) Specification 2009 (No. 1)* and the *Social Security (Administration) (Ending Unemployment Non-payment Periods - Classes of Persons) (DEEWR) Specification 2009 (No. 1)*