

EXPLANATORY STATEMENT

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

Human Services (Centrelink) Act 1997

Human Services (Centrelink) (Designated Program Act) Specification 2021

Purpose

The Human Services (Centrelink) (Designated Program Act) Specification 2021 (this Specification) specifies the *Australian Prudential Regulation Authority Act 1998* and the *Taxation Administration Act 1953* as designated program Acts for the purposes of paragraph (o) of the definition ‘designated program Act’ in subsection 40A(3) of the *Human Services (Centrelink) Act 1997* (the Centrelink Act).

The current instrument that specifies the *Australian Prudential Regulation Authority Act 1998* – the Human Services (Centrelink) (Designated Program Act) Specification 2011 (No.1) – is due to sunset on 1 October 2021.

The current instrument that specifies the *Taxation Administration Act 1953* – the Human Services (Centrelink) (Designated Program Act) Specification 2011 (No.2) – is due to sunset on 1 April 2022.

Background

Section 40A of the Centrelink Act sets out how secrecy laws apply where Services Australia (the Agency) holds particular customer information, and two or more different secrecy regimes apply to the use or disclosure of that information by the Agency.

The effect of section 40A is that where the Agency holds the same piece of information about a particular person under two or more programs that have secrecy regimes (such as social security and Medicare), the Agency is able to use and disclose that information if it complies with one of the secrecy regimes. The Agency may disregard the fact the information is subject to a regulatory regime under any other designated program Act.

Section 40A applies to secrecy regimes in “designated program Acts”. A list of designated program Acts is set out in the definition of this term in subsection 40A(3). In addition, an Act may be a designated program Act if it is specified by legislative instrument made by the Minister for the purposes of paragraph (o) of the definition ‘designated program Act’ in subsection 40A(3).

This Specification specifies the *Australian Prudential Regulation Authority Act 1998* and the *Taxation Administration Act 1953* as designated program Acts for the purposes of paragraph (o) of the definition ‘designated program Act’ in subsection 40A(3).

In relation to the *Australian Prudential Regulation Authority Act 1998*, the Agency still has some involvement in the early release of superannuation benefits despite no longer administering early release on behalf of the Australian Prudential Regulation Authority. Early release is conducted under the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Account Regulations 1997*.

The Agency's role is limited to the provision of evidence to superannuation funds for the purposes of supporting customers in their applications for early release on the basis of financial hardship. Under both the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Account Regulations 1997*, one of the grounds on which a person can seek early access to their superannuation benefits is severe financial hardship, established where a person has been in receipt of a Commonwealth income support payment for at least 26 continuous weeks. It is possible that customer information requested by, and subsequently disclosed to, superannuation funds may be captured by section 56 of the *Australian Prudential Regulation Authority Act 1998*.

In many instances, the same customer information held by the Agency would be protected by a different set of secrecy provisions, such as those in the *Social Security (Administration) Act 1999*. Information obtained from the Australian Prudential Regulation Authority may also be used for the administration of Centrelink programs, in accordance with the secrecy provisions of the relevant program legislation.

Specification of the *Australian Prudential Regulation Authority Act 1998* as a designated program Act avoids any legal uncertainty as to which set of secrecy provisions should apply to that customer information.

In relation to the *Taxation Administration Act 1953*, the Australian Taxation Office (ATO) regularly discloses taxation information to the Chief Executive Centrelink for the purposes of administering programs under the social security and family assistance law. Some of this taxation information is protected by on-disclosure restrictions in Division 355 of Part 5-1 of Chapter 5 of Schedule 1 to the *Taxation Administration Act 1953*. This customer information held by the Agency is also protected by the secrecy provisions in the *Social Security (Administration) Act 1999* and the *A New Tax System (Family Assistance)(Administration) Act 1999*.

The specification of the *Taxation Administration Act* as a designated program Act for the purposes of paragraph (o) of the definition 'designated program Act' in subsection 40A(3) of the Centrelink Act ensures that the Agency and the Chief Executive Centrelink is able to handle all customer information held for the purpose of social security and family assistance programs in accordance with the secrecy regime in the *Social Security (Administration) Act 1999* and the *A New Tax System (Family Assistance)(Administration) Act 1999*, including information disclosed by the ATO.

Overall, there are comprehensive protections for personal information in all of the designated program Acts. Irrespective of which secrecy regime applies, each regime allows the use and disclosure of a piece of personal information in only limited

circumstances, guided by the purposes of each Act, in the performance of duties under or in relation to each Act, or for the purpose for which the information was communicated. They also permit disclosure where it is in the public interest to do so, for example, to prevent or lessen a threat to a person's life, health or welfare. They all have similar criminal or civil penalties for breaches of the limited disclosures available under the secrecy regimes. The civil or criminal penalties for breaches of privacy in the overarching *Privacy Act 1988* may also apply. The designation of a program Act will not result in a reduction of protections applying to such information.

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 shall be 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.

Commencement

This Specification commences on the day after it is registered.

Consultation

Services Australia was consulted. Services Australia recommended the making of this Specification.

The Attorney-General's Department was consulted.

Regulation Impact Statement

A Regulatory Impact Statement is not required (OBPR reference 44316). This Specification will not impact on business activity and will have no, or minimal, compliance costs or competition impact on business. This Specification does not impose any obligations on the general public.

Explanation of the provisions

Section 1 provides that the name of this Specification is the Human Services (Centrelink) (Designated Program Act) Specification 2021.

Section 2 provides that this Specification commences on the day after it is registered.

Section 3 sets out that paragraph (o) of the definition 'designated program Act' in subsection 40A(3) of the Centrelink Act is the authority under which this Specification is made.

Section 4 contains a definition of 'Act', which means the *Human Services (Centrelink) Act 1997*.

Section 5 provides that any instrument specified in Schedule 1 to this Determination is amended or repealed according to the terms of the Schedule. In this instance, Schedule 1 repeals the Human Services (Centrelink) (Designated Program Act)

Specification 2011 (No. 1) and the Human Services (Centrelink) (Designated Program Act) Specification 2011 (No. 2).

Section 6 provides that the *Australian Prudential Regulation Authority Act 1998* and the *Taxation Administration Act 1953* are specified for the purposes of paragraph (o) of the definition 'designated program Act' in subsection 40A(3) of the Centrelink Act.

Schedule 1 repeals the entirety of the Human Services (Centrelink) (Designated Program Act) Specification 2011 (No. 1) and the Human Services (Centrelink) (Designated Program Act) Specification 2011 (No. 2).

Statement of Compatibility with Human Rights

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

Human Services (Centrelink) (Designated Program Act) Specification 2021

The Specification 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 Human Services (Centrelink) (Designated Program Act) Specification 2021 (this Specification) specifies the *Australian Prudential Regulation Authority Act 1998* and the *Taxation Administration Act 1953* as designated program Acts for the purposes of paragraph (o) of the definition ‘designated program Act’ in subsection 40A(3) of the *Human Services (Centrelink) Act 1997* (the Centrelink Act).

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Background

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The effect of section 40A is that where the Agency holds the same piece of information about a particular person under two or more programs that have secrecy regimes (such as social security and Medicare), the Agency is able to use and disclose that information if it complies with one of the secrecy regimes. The Agency may disregard the fact the information is subject to a regulatory regime under any other designated program Act.

Section 40A applies to secrecy regimes in “designated program Acts”. A list of designated program Acts is set out in the definition of this term in subsection 40A(3). In addition, an Act may be a designated program Act if it is specified by legislative instrument made by the Minister for the purposes of paragraph (o) of the definition ‘designated program Act’ in subsection 40A(3).

This Specification specifies the *Australian Prudential Regulation Authority Act 1998* and the *Taxation Administration Act 1953* as designated program Acts for the

purposes of paragraph (o) of the definition 'designated program Act' in subsection 40A(3).

In relation to the *Australian Prudential Regulation Authority Act 1998*, the Agency still has some involvement in the early release of superannuation benefits despite no longer administering early release on behalf of the Australian Prudential Regulation Authority. Early release is conducted under the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Account Regulations 1997*.

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In many instances, the same customer information held by the Agency would be protected by a different set of secrecy provisions, such as those in the *Social Security (Administration) Act 1999*. Information obtained from the Australian Prudential Regulation Authority may also be used for the administration of Centrelink programs, in accordance with the secrecy provisions of the relevant program legislation.

Specification of the *Australian Prudential Regulation Authority Act 1998* as a designated program Act avoids any legal uncertainty as to which set of secrecy provisions should apply to that customer information.

In relation to the *Taxation Administration Act 1953*, the Australian Taxation Office (ATO) regularly discloses taxation information to the Chief Executive Centrelink for the purposes of administering programs under the social security law. Some of this taxation information is protected by on-disclosure restrictions in Division 355 of Part 5-1 of Chapter 5 of Schedule 1 to the *Taxation Administration Act 1953*. This customer information held by the Agency is also protected by the secrecy provisions in the *Social Security (Administration) Act 1999* and the *A New Tax System (Family Assistance)(Administration) Act 1999*.

The specification of the *Taxation Administration Act* as a designated program Act for the purposes of paragraph (o) of the definition 'designated program Act' in subsection 40A(3) of the Centrelink Act ensures that the Agency and the Chief Executive Centrelink is able to handle all customer information held for the purpose of social security programs in accordance with the secrecy regime in the *Social Security (Administration) Act 1999* and the *A New Tax System (Family Assistance)(Administration) Act 1999*, including information disclosed by the ATO.

Overall, there are comprehensive protections for personal information in all of the designated program Acts. Irrespective of which secrecy regime applies, each regime allows the use and disclosure of a piece of personal information in only limited circumstances, guided by the purposes of each Act, in the performance of duties under or in relation to each Act, or for the purpose for which the information was communicated. They also permit disclosure where it is in the public interest to do so, for example, to prevent or lessen a threat to a person's life, health or welfare. They all have similar criminal or civil penalties for breaches of the limited disclosures available under the secrecy regimes. The civil or criminal penalties for breaches of privacy in the overarching *Privacy Act 1988* may also apply. The designation of a program Act will not result in a reduction of protections applying to such information.

Human rights implications

The Specification engages the following rights:

- the right to social security – Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2, and Article 22 of the *Universal Declaration of Human Rights* (UDHR);
- the right of a child to benefit from social security – Article 26 of the *Convention on the Rights of the Child* (CRC);
- the right to an adequate standard of living – Article 11 of the ICESCR, Article 25 of the UDHR;
- the right to privacy – Article 12 of the UDHR, Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), Article 16 of the CRC, Article 14 of the *International Convention on the Protection of All Migrant Workers and Members of Their Families* (ICPAMWMTF).

Right to social security and the right of a child to benefit from social security

Article 9 of the ICESCR and Article 22 of the UDHR recognise the right of everyone to social security. Article 26 of the CRC recognises that every child has the right to benefit from social security. The Specification promotes these rights by allowing for the efficient and responsible administration of Centrelink payments and programs.

Right to an adequate standard of living

Article 11 of the ICESCR and Article 25 of the UDHR recognise the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The Specification promotes these rights by allowing for the efficient and responsible administration of Centrelink payments and programs.

Right to privacy

Article 12 of the UDHR, Article 17 of the ICCPR, Article 16 of the CRC and Article 14 of the ICPAMWMTF recognise that no one shall be subjected to arbitrary interference with their privacy, family, home or correspondence. The Specification promotes the accountable handling of information in order to protect people's privacy and correspondence.

The *Australian Prudential Regulation Authority Act 1998*, the *Taxation Administration Act 1953* and the Centrelink Program Acts have provisions that adequately protect privacy by limiting the collection, use and disclosure of personal information to particular purposes. A person who breaches these provisions is subject to criminal or civil penalties. The overarching *Privacy Act 1988* also includes criminal and civil penalty provisions for interferences with privacy.

Conclusion

The Specification is compatible with human rights because it advances the protection of human rights.

Anne Ruston, Minister for Families and Social Services