

EXPLANATORY STATEMENT

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

Social Security Act 1991

Social Security (Essential Medical Equipment Payment – Residences) Specification
2022

Purpose

The purpose of the Social Security (Essential Medical Equipment Payment – Residences) Specification 2022 (this instrument) is to replace the Social Security (Essential Medical Equipment Payment – Residences) Specification 2012, which will sunset on 1 April 2022.

This instrument allows a person to qualify for an annual Essential Medical Equipment Payment (EMEP) if they as the person with medical needs, or they as the carer of the person with medical needs and the person for whom they care, reside in a home that is a specified residence.

Background

The EMEP is an annual indexed payment paid to certain households where a person, for medical reasons, must use essential medical equipment or additional heating or cooling, resulting in higher than average energy use.

The EMEP is provided for by Division 4 of Part 2.18A of the *Social Security Act 1991* (the Act). A person is qualified for an EMEP if they satisfy the medical needs requirement in section 917C, the concession card requirement in section 917D, the energy account requirement in section 917E, and otherwise meet the requirements of section 917B.

Part of the medical needs requirement in section 917C is that the person with medical needs, or the carer of the person with medical needs and the person for whom they care, reside in an EMEP residence. An EMEP residence is the person's, or the carer and the person's, home and is either a private residence or a specified residence.

An EMEP may alternatively be payable in relation to holders of concession cards under the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act), based upon identical criteria.

Commencement

This instrument commences on 1 April 2022.

Paragraph 917C(3)(c) of the Act allows the Minister to specify, by legislative instrument, residences for the purposes of paragraphs 917C(1)(a) and (b).

Consultation

External consultation was conducted with the following organisations:

- Australian Medical Association
- Royal Australasian College of Physicians
- Royal Australian College of General Practitioners
- Australian Council of Social Services
- People with Disability Australia
- Children and Young People with Disability Australia
- Australian Federation of Disability Organisations
- Inclusion Australia
- Carers Australia
- National Seniors Australia
- National Aboriginal Community Controlled Health Organisation
- First Peoples Disability Network.

The organisations were provided the opportunity to comment on the draft instrument. The Department of Social Services (the department) did not receive feedback from any organisation.

The department also held discussions with the Department of Veteran's Affairs and Services Australia. State and territory governments were also notified of the intention to renew the instruments and given the opportunity to provide comments.

Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement. This instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: OBPR21-01046).

Availability of independent review

A decision made as informed by this instrument under section 917B as to qualification for the EMEP is reviewable both internally and externally under the enabling Act and Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Explanation of the provisions

Section 1

This section provides that the name of this instrument is the Social Security (Essential Medical Equipment Payment – Residences) Specification 2022.

Section 2

This section provides that this instrument commences on 1 April 2022.

Section 3

This section provides that the authority for making this instrument is paragraph 917C(3)(c) of the Act.

Section 4

This section provides that in this instrument the Act means the *Social Security Act 1991*.

Section 5

This section specifies residences for the purposes of paragraphs 917C(1)(a) and (b).

Statement of Compatibility with Human Rights

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

Social Security (Essential Medical Equipment Payment – Residences) Specification 2022

The Social Security (Essential Medical Equipment Payment – Residences) Specification 2022 (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 legislative instrument

The purpose of this instrument is to replace the Social Security (Essential Medical Equipment Payment – Residences) Specification 2012, which will sunset on 1 April 2022.

This instrument allows a person to qualify for an annual Essential Medical Equipment Payment (EMEP) if they as the person with medical needs, or they as the carer of the person with medical needs and the person for whom they care, reside in a home that is a specified residence.

Human rights implications

This legislative instrument engages the following rights:

- Right to social protection and social security
- Right to privacy and reputation.

Right to social protection and social security

This instrument engages the right to social protection under article 28(2) of the Convention of the Rights of Persons with Disabilities (the CRPD) and the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The right to social protection requires that persons with disabilities have access to affordable services, devices and other assistance for disability-related needs.

The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must 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 enables people to qualify for the EMEP, subject to other eligibility requirements. The payment provides financial assistance for people with higher than average energy usage due to equipment required for medical reasons. This instrument is therefore compatible with the right to social protection and the right to social security.

Right to privacy and reputation

This instrument engages with the right to privacy and reputation under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). The right to privacy and reputation provides that '[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'

This instrument will only authorise the collection of information for the purposes of determining the qualification for, and payability of, the EMEP in accordance with the *Social Security Act 1991*. This instrument will also operate in conjunction with the privacy requirements of the Division 3 of Part 5 of the *Social Security (Administration) Act 1999* and the *Privacy Act 1988*. This instrument is therefore compatible with the right to privacy and reputation.

Conclusion

This instrument is compatible with human rights as it enables a person to access social protection and social security in the form of the EMEP and provides the appropriate protection to a person's privacy with the collection of information.

Anne Ruston, Minister for Families and Social Services