EXPLANATORY STATEMENT

Social Security (Administration) (Relocation Assistance) Specification 2014

Summary

The Social Security (Administration) (Relocation Assistance) Specification 2014 (the Specification) is made by the Secretary of the Department of Employment under paragraph 42S(3B)(b) of the Social Security (Administration) Act 1999 (the Administration Act).

The instrument also relies on the authority in subsection 33(3) of the Acts Interpretation Act 1901, which, in summary, provides that where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such an instrument.

The Specification revokes and replaces the Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2013 (No. 1) (the 2013 Specification). The Specification adds a further category of ‘relocation assistance’ to that listed in the 2013 Specification – payments made under the Relocation Assistance to Take Up a Job programme, which is to commence on 1 July 2014.

Currently, eligible job seekers may receive relocation assistance delivered by employment services providers to assist them to relocate to or settle into their new location. Where a person has been paid relocation assistance in respect of a job during a period of six months before their employment ends because of their own voluntary act or misconduct, a participation payment is not payable to that person for up to 12 weeks from the date that their employment ends (paragraph 42S(3)(b)).

The current Move 2 Work funding is a type of relocation assistance for the purpose of this non-payment period, as it is specified in the 2013 Specification. The Move 2 Work programme will end on 30 June 2014, i.e. persons will not be able to enter agreements after that date to be paid assistance under that programme, but may receive assistance after that date as long as it is under an agreement entered by that date. The Move 2 Work programme will be replaced by the new Relocation Assistance to Take Up a Job programme.

To be eligible for a payment under the new programme, a job seeker must be a recipient of Newstart Allowance, a recipient of Youth Allowance (other than as an apprentice or full-time student) or a recipient of parenting payment with participation requirements. Those who relocate to a regional area (whether from a capital city or another regional area) will receive up to $6,000. Those who move to a capital city from a regional area will receive up to $3,000. A person would not receive assistance to relocate within a capital city – for instance, from Parramatta to Mosman in Sydney.

Relocations between capital cities will be limited to cases where the relocation is to a capital city with a lower unemployment rate. For example, as at February 2014 a person could relocate from Hobart to Melbourne as Melbourne has a lower unemployment rate than Hobart.

Families with dependent children will be provided with up to an additional $3,000.

Explanation of provisions

Sections 1 and 2 of the Specification provide for the name of the Specification and its commencement, respectively.
Section 3 revokes the 2013 Specification.

Section 4 specifies the kinds of payments that can be considered ‘relocation assistance’ for the purposes of paragraph 42S(3B)(b) of the Administration Act. These are, as specified in subsection 4(1), payments under the Relocation Assistance to Take Up a Job programme or Move 2 Work programme – both administered by the Department of Employment.

Subsection 4(2) provides that if a person is paid two or more payments under either of the above programmes in relation to particular employment, only the first such payment is specified. This is because when a person receives assistance under either programme the assistance may be, and usually is, provided through more than one payment over a period of time. Subsection 4(2) means that the six month period referred to in paragraph 42S(3)(b) will not start again each time a payment is made to a person in respect of the same employment.

Consultation

No consultation was undertaken in relation to the Specification because the Specification is of a minor or machinery nature and does not substantially alter existing arrangements.

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement (Office of Best Practice Regulation reference number 16944). The Determination is not regulatory in nature, will not impact on business activity and will not impact on compliance costs or competition.
Statement of Compatibility with Human Rights

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

Social Security (Administration) (Relocation Assistance) Specification 2014

Overview of the Specification


Section 42S means that a non-payment period of up to 12 weeks can be applied in relation to a person who becomes unemployed due to a voluntary act or misconduct within six months of having received relocation assistance to take up that job.

Division 3A of Part 3 of the Administration Act deals with compliance with obligations in relation to participation payments, for example Newstart Allowance, Youth Allowance (other than as an apprentice or full time student) and Parenting Payment (with participation requirements). Section 42S in that Part deals with unemployment resulting from a voluntary act or from misconduct where relocation assistance has been paid to a person.

Under the current Move 2 Work programme, eligible job seekers may receive relocation assistance to assist them to relocate to or settle into their new location. Where a person has been paid relocation assistance in respect of a job during a period of 6 months before their employment ends because of their own voluntary act or misconduct, a participation payment is not payable to that person for up to 12 weeks from the date that their employment ends (section 42S).

Move 2 Work is a type of relocation assistance specified by the 2013 Specification. Move 2 Work will end on 30 June 2014, i.e. persons will not be able to enter agreements after that date to receive assistance under that programme, but may receive assistance after that date as long as it is under an agreement entered by that date. Move 2 Work will be replaced by the new Relocation Assistance to Take Up a Job programme. The Specification is being updated to take account of this new programme. The current non-payment period of up to 12 weeks will apply to participants in both these programmes (if participants leave employment in circumstances where the non-payment period would apply).

Relocation Assistance to Take Up a Job

Relocation Assistance to Take Up a Job will provide financial assistance to long term unemployed job seekers who relocate to take-up ongoing employment. It will commence on 1 July 2014, be demand driven, and will be implemented under existing job services arrangements, that is delivered by employment services providers contracted to deliver employment services.

Those who relocate to a regional area (whether from a capital city or another regional area) will receive up to $6,000. Those who move to a capital city from a regional area will receive up to $3,000. A person would not receive assistance to relocate within a capital city – for instance, from Parramatta to Mosman in Sydney.

Relocations between capital cities will be limited to cases where the relocation is to a capital city with a lower unemployment rate. For example, as at June 2014 a person could relocate from Hobart to Melbourne as Melbourne has a lower unemployment rate than Hobart. Families with dependent children will be provided with up to an additional $3,000.
Job seekers who have been receiving Newstart Allowance, Youth Allowance (other than as an apprentice or full time student), or Parenting Payment (with participation requirements) for at least the preceding 12 months will be eligible.

**Human rights implications**

The Specification engages the following human rights.

**Right to work**

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to work. Relocation assistance to enable job seekers to move to areas with opportunities of ongoing employment encourages recipients to engage with their right to work.

The Relocation Assistance to Take Up a Job programme has been designed to create a strong incentive for genuine job seekers to relocate for work and to assist them to do so. It involves significant financial assistance to help job seekers relocate, and thereby to help the labour market to operate more effectively to allow more vacancies to be filled as they arise. The excess labour supply in low growth regions/industries is not sufficiently mobile to fill the emerging opportunities (across all skill levels) in industries/regions experiencing high rates of employment growth. The new programme therefore promotes the right to work.

**Right to social security and right to an adequate standard of living**

Article 9 of the ICESCR recognises the right of everyone to social security. Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions.

The Relocation Assistance to Take Up a Job programme is designed to encourage eligible job seekers to take up employment opportunities and move off their social security payment. The new programme builds on existing social security provisions concerning working age payments, a major purpose of which is to encourage people into employment. The new programme also complements employment services programmes which, among other assistance, provides job seekers with reasonable access to computers and other job search facilities as well as assistance with resumes and job interview preparation.

There may be a small group in relation to which the non-payment period of up to 12 weeks could limit the right to social security and the right to an adequate standard of living. These are persons who receive relocation assistance in relation to a job and then leave that job due to their misconduct as an employee, or due to a voluntary act by them which was not reasonable, if the person was first paid the relocation assistance less than six months before they became unemployed (section 42S). This impact would temporarily affect a person’s access to social security payments, in a non-discriminatory manner.

There are reasonable justifications for this impact as now outlined. The purpose of the new programme would be frustrated if job seekers do not remain in employment once they have moved. The new programme therefore encourages job seekers to make an informed decision before committing to relocate for work. Before relocation assistance is paid to, or for the benefit of, a person the person is required to sign an agreement relating to the payment, which sets out the effect of section 42S, so that the person will be aware of the potential for a non-payment period to apply. Also, under their deeds with the Commonwealth, employment services providers must ensure that the potential employment is suitable for the job seeker given their individual circumstances.

The non-payment period will continue to be able to be ended at any time, based on existing provisions in the social security law, for certain cohorts of job seekers (including those with children) who are in severe financial hardship. Affected persons will still have the benefit of the usual operation of existing hardship waiver provisions, so that the non-payment period will not prevent a person from accessing essentials, for

Explanatory Statement to F2014L00900
example basic levels of health care, housing, or sanitation.

In particular, the current subsection 42S(4) provides that a person’s unemployment non-payment period may be ended on the grounds of severe financial hardship if the person is within a class of persons specified in a legislative instrument made under subsection 42S(5) (the Ending Unemployment Non-Payment Periods instrument) – this will continue to apply.

The classes of persons specified in the Ending Unemployment Non-Payment Periods instrument include those with significant family and caring responsibilities including those with a dependent child; who have an illness, impairment or condition and who cannot afford necessary treatment after meeting essential expenses; who have a mental or psychological impairment or condition; or who do not have safe, secure, and adequate housing, or who are using emergency accommodation or a refuge.

The new programme has been designed to reduce the likelihood of a person becoming subject to a non-payment period and to ensure that the non-payment period is not applied without good reason. Section 42S means that the non-payment period cannot apply where programme participants genuinely cannot continue in a job through no fault of their own, or have reasonable grounds for leaving the job for which they received relocation assistance.

The Guide to Social Security Law, which is intended by the department to be taken into account in relation to decisions under the social security law, states in section 1.1.U.55 that in deciding whether a person has reasonable grounds for leaving their job, the delegate should consider, on a case-by-case basis, all relevant issues presented, including any claims of sexual harassment, bullying or unsafe work conditions, any unlawful activity by an employer, and the job seeker’s personal circumstances.

A person who has a non-payment period imposed on them, or who is subject to a decision not to end their non-payment period, will be able to seek internal review of those decisions by the Department of Human Services. If not satisfied with the outcome of the internal review, the person will be able to appeal to a tribunal. If not satisfied with the outcome the person would be able to appeal, on questions of law, to courts.

Furthermore, an individual may receive services up to the value of $9,000 if relocating to a regional area with dependent children. As can be seen from the following table, these amounts are greater than the financial impact of the non-payment period.

<table>
<thead>
<tr>
<th></th>
<th>Maximum base fortnightly rate</th>
<th>Financial impact of the non-payment period - if it applies for the maximum of 12 weeks</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSA Single, 22 or over, no children</td>
<td>$501.00</td>
<td>$3,006.00</td>
</tr>
<tr>
<td>NSA Single, with children</td>
<td>$542.10</td>
<td>$3,252.60</td>
</tr>
<tr>
<td>Parenting Payment Single (youngest child 6-7)</td>
<td>$699.90</td>
<td>$4,197.60</td>
</tr>
<tr>
<td>Youth Allowance at home</td>
<td>$226.80</td>
<td>$1,360.80</td>
</tr>
<tr>
<td>Youth Allowance – Independent</td>
<td>$414.40</td>
<td>$2,486.40</td>
</tr>
</tbody>
</table>


2 The instrument provides that a person does not have safe, secure and adequate housing if their housing would be likely to threaten their health or safety, if their housing lacks reasonable personal amenities, or if the person does not have a reasonable expectation of being able to remain in the housing.
The table shows that for most of the payments in question, the maximum amounts of assistance available are substantially greater than the financial impact of the non-payment period, even if the non-payment period runs its maximum 12 week course.

It is reasonable that an individual, not in severe financial hardship, should not be able to immediately or within 12 weeks turn to the social security system where they have left a job for which they received relocation assistance voluntarily without good reason, or as a result of misconduct, less than six months after they received the relocation assistance.

Conclusion

The Specification is compatible with human rights because to the extent that it may have an adverse impact on human rights, the impact is reasonable and for legitimate reasons.