

# EXPLANATORY STATEMENT

## ***Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2013 (No. 1)***

### **Summary**

The *Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2013 (No. 1)* (the Specification) is made by the Secretary to the Department of Education, Employment and Workplace Relations 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 instrument.

The Specification specifies the kinds of payments that constitute “relocation assistance” for the purposes of paragraph 42S(3)(b) of the Administration Act, which imposes a 12-week unemployment non-payment period (UNPP) on certain job seekers who become unemployed due to a voluntary act or misconduct within six months of having been paid relocation assistance to take up that job.

The Specification replaces the *Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2010* (the 2010 Specification). The Specification adds a further category of “relocation assistance” than was listed in the 2010 Specification – payments made under Move 2 Work. Move 2 Work aims to assist the following job seekers take up suitable employment:

- fully eligible job seekers registered with a Job Services Australia Provider or participants registered with a Disability Employment Services Provider who are in receipt of a participation payment and are subject to activity test or participation requirements; and
- retrenched job seekers who are registered with a Job Services Australia Provider who have a letter of redundancy from their former employer.

Although the Connecting People with Jobs trial (the CPWJ trial) is ending on 30 June 2013, it is still included in the Specification as payments may still be made under the CPWJ trial after June 2013.

## Explanation of provisions

**Sections 1 and 2** of the Specification are mechanical provisions that provide for the name of the Specification and its commencement, respectively. The Specification commences on 1 July 2013 to coincide with the commencement of Move 2 Work.

**Section 3** revokes the 2010 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. That is, a payment made to a person under the CPWJ trial or a payment made under Move 2 Work – both administered by DEEWR.

Under the CPWJ trial, people in receipt of certain income support payments may be eligible for financial assistance of up to \$9000, to assist them with the costs of relocating in order to take up a job. As explained above, however, the CPWJ trial is ending on 30 June 2013.

Move 2 Work will start on 1 July 2013 (with payments under Move 2 Work able to be made from that date). Eligible participants with dependants are entitled to up to \$6500 of assistance, and participants with no dependants are entitled to up to \$4500 of assistance, to assist with the costs of relocating to take up employment.

With both the CPWJ trial and Move 2 Work, the person must accept the job before the assistance will be paid, and the assistance will be paid only in connection with taking up that job – that is, relocation assistance will only be paid where a person has a job to go to.

The assistance may be paid to the person directly (on a reimbursement basis), or it could be paid on the person’s behalf to an organisation that has provided services to the person (for example, an airline or removalist company). Whether the payment is made directly to the person or to an organisation on the person’s behalf, the payment will be regarded as a payment made to the person and will be relocation assistance.

Under paragraph 42S(3)(b) of the Administration Act, if a person becomes unemployed due to a voluntary act (which could include leaving a job or accepting a job but not actually commencing the job) or misconduct, and they were paid relocation assistance in relation to that employment within the six months before becoming unemployed, a participation payment is not payable to the person for 12 weeks. However, a person could receive more than one payment of relocation assistance under the CPWJ trial or Move 2 Work. For example, separate payments might be made for airfares, removalists, and post-placement support. In that case, subsection 4(2) of the Specification provides that only the first payment made to the person in relation to a particular job is “relocation assistance”. This means that, to determine whether a person is subject to a 12-week UNPP under paragraph 42S(3)(b), it must be determined whether the person was paid the first payment of relocation assistance within the six months before becoming unemployed due to a voluntary act or misconduct. Subsequent payments made to the person under the CPWJ trial or Move 2 Work, in relation to that same job, are not relocation assistance for the purposes of paragraph 42S(3)(b).

If relocation assistance is subsequently paid to the person under the CPWJ trial or Move 2 Work and relates to a different job, the first of these payments will again be considered “relocation assistance”. This means that if a payment is made to a person under the CPWJ trial or Move 2 Work to pursue another employment opportunity, and the person again becomes unemployed due to a voluntary act or misconduct, the person may be subject to another 12-week UNPP if the first relocation assistance payment in respect of that job was made within the six months before that unemployment.

## **Consultation**

The Specification is as a result of the Government’s 2013-2014 Budget.

Consultation regarding this amendment was undertaken with the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education but the Secretaries of the aforementioned departments will not be making an equivalent instrument in relation to their responsibilities under the social security law.

No public consultation was considered necessary.

## **Regulatory Impact Analysis**

The Specification does not require a Regulatory Impact Statement nor a Business Cost Calculator Figure. The Specification is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

# 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) (DEEWR) Specification 2013 (No. 1)**

The *Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2013 (No. 1)* 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 *Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2013 (No. 1)* (the Specification) revokes and replaces the *Social Security (Administration) (Relocation Assistance) (DEEWR) Specification 2010* (the 2010 Specification) to add payments made under Move 2 Work as payments that can be considered “relocation assistance” for the purposes of paragraph 42S(3)(b) of the *Social Security (Administration) Act 1999* (the Administration Act), which imposes a 12-week unemployment non-payment period (UNPP) on certain job seekers who become unemployed due to a voluntary act or misconduct within six months of having been paid relocation assistance to take up that job.

#### *Imposition of a 12-week non-payment period*

The *Social Security Legislation Amendment (Connecting People with Jobs) Act 2010* introduced the application of a 12-week UNPP on a person if they become unemployed due to a voluntary act (which could include leaving a job or accepting a job but not actually commencing the job) or misconduct, and the person has been paid relocation assistance in relation to that employment in the six months before becoming unemployed. This means that the person’s participation payment is not payable to them for 12 weeks (although there is a discretion available to the Secretary in subsection 42S(4) of the Administration Act to end a person’s UNPP in certain circumstances).

However, in order to incur a 12-week UNPP, the “relocation assistance” a person receives must be of a kind specified by the Secretary under paragraph 42S(3B)(b) of the Administration Act.

### *“Relocation assistance”*

Currently, a person receives “relocation assistance” specified under paragraph 42S(3B)(b) if they receive a payment under the Connecting People with Jobs (CPWJ) trial. This payment can assist a person with the costs of relocating in order to take up a job. The person must accept the job before the assistance will be paid but the assistance may be paid to the person directly on a reimbursement basis, or it could be paid on the person’s behalf to an organisation that has provided services to the person (for example, an airline or removalist company).

The CPWJ trial is scheduled to end on 30 June 2013 but payments made under the CPWJ trial will still be considered relocation assistance as payments may still be paid in the transition period to Move 2 Work.

Move 2 Work is being introduced on 1 July 2013 and provides funding for job seekers to relocate to take up suitable employment. The Specification adds payments made under Move 2 Work as a kind of relocation assistance that is specified under paragraph 42S(3B)(b) for the purposes of imposing a 12-week UNPP under paragraph 42S(3)(b).

### **Human rights implications**

The Specification engages the following human rights:

- the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to an adequate standard of living in Article 11 of the ICESCR and Article 28 of the Convention on the Rights of Persons with Disabilities.

The Specification engages the right to social security and the right to an adequate standard of living in encouraging job seekers to relocate for work and creating an incentive for those job seekers to stay in their new location and in sustainable employment. If a job seeker voluntarily leaves their job (including where the job seeker accepts a job but does not actually start the job) or leaves due to misconduct, an 8-week UNPP usually applies. This is extended to 12 weeks should a job seeker receive “relocation assistance” and then become unemployed due to a voluntary act or misconduct in the next six months. While job seeker compliance is important, the Administration Act also contains the discretion to reduce or not impose a UNPP on a case by case basis, such as when it would place a vulnerable job seeker in severe financial hardship (subsection 42S(4)).

The changes in the Specification from the 2010 Specification reflect the changes in the administered programs granting payments to help job seekers relocate.

The Specification adds payments made under Move 2 Work as another specified type of “relocation assistance”. The scope of the Specification is therefore broader than the 2010 Specification as a person can be placed on a 12-week UNPP if they receive “relocation assistance” under either the CPWJ trial or Move 2 Work and they satisfy the criteria stated in paragraph 42S(3)(b) of the Administration Act) (under Move 2 Work, this not only includes fully eligible job seekers registered with a Job Services Australia Provider or participants registered with a Disability Employment Services Provider but also those retrenched job seekers who have a letter of redundancy from their former employer and are registered with a Job Services Australia Provider). However, the Specification will still only potentially affect those job seekers who receive a participation payment and are subject to activity testing or participation requirements.

Although more people may receive payments under Move 2 Work than those who receive payments under the CPWJ trial (eg. retrenched job seekers), the possibility of being placed on a 12-week UNPP should be offset by the opportunity a job seeker is given in receiving relocation assistance and being able to relocate to obtain sustainable employment.

## **Conclusion**

The Specification is compatible with human rights and promotes the right to an adequate standard of living by encouraging individuals to obtain and stay in sustainable employment.