

## EXPLANATORY STATEMENT

### **Social Security (Administration) (Exempt Welfare Payment Recipients — Principal Carers of a Child) (Specified Activities) Instrument 2015**

The *Social Security (Administration) (Exempt Welfare Payment Recipients — Principal Carers of a Child) (Specified Activities) Instrument 2015* is made by the Minister for Social Services under subsections 123UGD(2) and (3) of the *Social Security (Administration) Act 1999* (the Act).

#### **Background**

This Instrument replaces the *Social Security (Administration) (Exempt Welfare Payment Recipients — Persons with Dependent Children) (Specified Activities) Determination 2010* (the 2010 Determination).

This Instrument is needed to replace the 2010 Determination following amendments to subsections 123UGD(2) and (3) of the Act, the provision under which the 2010 Determination was made.

These amendments are contained in Part 3 of Schedule 1 to the *Social Services Legislation Amendment (No.2) Act 2015*.

These amendments removed references in Part 3B to 'dependent child of another person' and substituted references to the person being the principal carer of a child.

The amendments align the manner in which people with dependent children are treated for income management purposes with the broader approach to dependent children of most social security payments, by relying upon the concept of a 'principal carer' to identify a person who relevantly has such dependants. No substantive change to the number or range of activities specified by the 2010 Determination is made by this Instrument, but the terminology of the instrument is updated to reflect the concept of a principal carer rather than the concept of a dependent child of another person.

#### **Purpose**

Subdivision BB of Division 2 of Part 3B of the Act provides for exemptions for people who become subject to income management under the disengaged youth and long-term welfare payment recipient measures.

For a person who is not the principal carer of a child, the exemption criteria (in section 123UGC of the Act) relate, in general terms, to engagement in full-time study or a sustained pattern of employment.

For a person who is the principal carer of a child, the exemption criteria (in section 123UGD of the Act) relate, in general terms, to responsible parenting practices and to whether there have been indications of financial vulnerability in relation to a person during the preceding 12 months.

The *Social Security (Administration) (Exempt Welfare Payment Recipients — Persons with Dependent Children) (Indications of Financial Vulnerability) Principles 2010* set out decision-making principles that the Secretary must comply with in deciding whether he or she is satisfied that there have been no indications of financial vulnerability in relation to a person in the preceding 12 months.

For a person who is the principal carer of a school age child to be exempt under paragraph 123UGD(1)(b) of the Act, the Secretary must be satisfied that, at the test time:

- the child is enrolled at a school, and the child has not had more than 5 unexplained absences in each of the 2 school terms ending immediately before the test time; or
- the child is covered by a schooling arrangement that is acceptable under a law of a State or Territory as an alternative to enrolment or attendance at a school (for example, a home-schooling arrangement), and the child's schooling, under that arrangement, is progressing satisfactorily; or
- the child is participating in an activity (an **alternative school-age activity**) specified by the Minister, by legislative instrument.

This Instrument specifies alternative school-age activities for the purposes of paragraph 123UGD(1)(b) of the Act.

For a person whose child is not a school age child to be exempt under paragraph 123UGD(1)(c) of the Act, the Secretary must be satisfied that, at the test time, the person or the child is participating in the number and kind of activities (**pre-school activities**) specified by the Minister, by legislative instrument.

This Instrument also specifies pre-school activities for the purposes of the requirements in paragraph 123UGD(1)(c) of the Act.

The Instrument is a legislative instrument.

## **Explanation and effect of provisions**

**Section 1** sets out the title of the Instrument.

**Section 2** provides that the Instrument commences upon registration.

**Section 3** revokes the 2010 Determination.

**Section 4** contains definitions that are relevant to the Instrument.

**Section 5** of the Instrument provides for **Schedule 1** to the Instrument, which sets out alternative school-age activities for the purpose of subparagraph 123UGD(1)(b)(iii) of the Act.

Section 5 provides that the activity set out in Schedule 1 only applies in relation to a particular class of school age children — school age children who have a terminal condition. (Subsection 4(1) provides that the term ‘terminal condition’ has the same meaning, in this Instrument, as in the *Social Security Act 1991*.)

The effect of section 5 and Schedule 1 is twofold. First, for the purposes of paragraph 123UGD(1)(b) of the Act, the Secretary may determine that a person who is the principal carer of a child with a terminal condition is an exempt welfare payment recipient if, in addition to being satisfied of the other things that the Secretary is required to be satisfied of under subsection 123UGD(1), the Secretary is satisfied that the child is participating in ongoing treatment in relation to their condition. Second, in relation to a school age child who does not have a terminal condition, the Secretary would have to be satisfied that the conditions in subparagraph 123UGD(1)(b)(i) or (ii) were met.

No other alternative school-age activities have been provided for in this Instrument because there is a general expectation that children are enrolled in and attending school.

**Section 6** of the Instrument provides for **Schedule 2** to the Instrument, which sets out alternative pre-school activities for the purpose of paragraph 123UGD(1)(c) of the Act in relation to a child for whom a person is the principal carer.

For paragraph 123UGD(1)(c), when determining whether a person is an exempt welfare payment recipient, the Secretary must be satisfied that the person or the child is participating in the required number and kind of activities specified in the Instrument.

**Section 7** specifies the number and kinds of pre-school activities in relation to children other than school age children. The number and kind of activities that apply are determined with reference to 3 main factors:

- the age of the child;
- the medical condition of the child; and
- whether the child is attending pre-school.

Item 7 of the table in section 7 sets out the number and kind of activities in relation to any child who is younger than school age and who has a terminal condition. The requirement in item 7 is the only requirement that applies to a child younger than school age and who has a terminal condition, regardless of the child’s precise age. (The other requirements in items 1 to 6 of the table in section 7 are all expressed to apply to a child to whom item 7 does not apply: that is, a child who does not have a terminal condition.)

Under item 7 of the table in section 7, for the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in only one activity set out in Part 1 of Schedule 2. Only one activity is listed in Part 1 of Schedule 2. Accordingly, for paragraph 123UGD(1)(c), a child who is younger than school age and who has a terminal condition would need to

be participating in a program of treatment provided in relation to that terminal condition. In this context, because of the definition in section 3 of the Instrument, treatment includes care and so could include, for example, palliative care.

Item 1 of the table in section 7 applies to a child who is aged less than 36 months (other than a child of that age with a terminal condition). For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in two activities listed in Part 2 of Schedule 1. The activities in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. Regular monitoring of health and physiological development is considered beneficial for all young children to maintain healthy growth and development. In addition, engagement with health services relating to child development is considered an indicator of responsible and engaged parenting.

Items 2 and 3 of the table apply to children who are aged between 36 and 48 months. To determine whether item 2 or 3 will apply in relation to a particular child, in a particular case, it is necessary to look at the conditions specified in column 3 of the items.

Item 2 of the table in section 7 applies to a child who is aged between 36 and 48 months (other than a child of that age with a terminal condition), and who has a severe disability or severe medical condition (as defined in subsection 4(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in three of the activities listed in Part 2 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. This specific rule recognises that children who have a severe disability or medical condition may have difficulties accessing or participating in the kinds of activities listed in Part 3 of Schedule 2, and that it is appropriate for the focus, for paragraph 123UGD(1)(c) of the Act, to be on participation in activities that are specifically tailored to addressing their particular health concerns.

Item 3 of the table in section 7 applies to a child who is aged between 36 and 48 months (other than a child of that age with a terminal condition), and who does not have a severe disability or severe medical condition (as defined in subsection 4(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in two of the activities listed in Part 2 of Schedule 2 plus one of the activities listed in Part 3 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. The activities that are listed in Part 3 of Schedule 2 are activities that relate to the child's intellectual, physical and social development.

In addition to regular engagement with health and physiological development services, it is appropriate for children in this age group to be participating in some form of socialisation or engagement. The flexible range of activities

specified in Part 3 of Schedule 2 acknowledges that formal or facilitated services are not always available for children in this age group but recognises the benefits of social interaction for both children and their parents.

Items 4, 5 and 6 apply to children who are aged at least 48 months and who are not school age children. To determine which of those items will apply in relation to a particular child, in a particular case, it is necessary to look at the conditions specified in column 3 of the items.

Item 4 of the table in section 7 applies to a child who is aged at least 48 months (other than a child of that age with a terminal condition), who has a severe disability or severe medical condition (as defined in subsection 4(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2, and who is not attending pre-school. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in three of the activities listed in Part 2 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. This specific rule recognises that children who have a severe disability or medical condition may have difficulties accessing or participating in the kinds of activities listed in Part 3 of Schedule 2, and that it is appropriate for the focus to be on participation in activities that are specifically tailored to addressing their particular health concerns.

Item 5 of the table in section 7 applies to a child who is aged at least 48 months (other than a child of that age with a terminal condition), who does not have a severe disability or severe medical condition (as defined in subsection 4(1)) that prevents the child from participating in the activities set out in Part 3 of Schedule 2, and who is not attending pre-school. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in two of the activities listed in Part 2 of Schedule 2 and two of the activities listed in Part 3 of Schedule 2.

The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. The activities that are listed in Part 3 of Schedule 2 are activities that relate to the child's intellectual, physical and social development. Because the child is not attending pre-school, it is appropriate for there to be a requirement for the child to be participating in the kinds of activities set out in Part 3 of Schedule 2. More structured forms of social development should apply to children in this age group to in order to facilitate to school-readiness and cognitive development.

Item 6 of the table in section 7 applies to a child who is aged at least 48 months (other than a child of that age with a terminal condition), and who is attending pre-school. For the purposes of paragraph 123UGD(1)(c) of the Act, the child is required to be participating in two of the activities listed in Part 2 of Schedule 2 and two of the activities listed in Part 3 of Schedule 2. The activities that are listed in Part 2 of Schedule 2 are activities that relate primarily to the child's health and physiological development. Because the child is attending pre-school, which provides the child with socialisation

opportunities as well as structured learning, there is no requirement for the child to be participating in any of the activities set out in Part 3 of Schedule 2 (which relate to similar developmental goals).

A child who is aged at least 48 months, and who has a severe disability or medical condition but who was attending pre-school despite that disability or condition would be covered by the requirements in item 6 of the table in section 7 (because they would not be a child to whom item 4 of the table in section 7 applies). For the purposes of paragraph 123UGD(1)(c) of the Act, the child would be required to be participating in two of the activities listed in Part 2 of Schedule 2.

Subsection 7(2) sets out an interpretation provision that is relevant to determining, under section 7, which number and kind of pre-school activities apply to a child who is not a school age child. Subsection 7(2) provides that a child is 'unable to participate in an engagement-related activity' (that is, an activity that is set out in Part 3 of Schedule 2, if the child has a severe disability or severe medical condition and, because of that disability or medical condition, the child is not able to participate in any of the activities set out in Part 3 of Schedule 2 of the Instrument. Part 3 of Schedule 2 sets out a range of activities that relate to children's intellectual, physical and social development. (Subsection 4(1) of the Instrument provides that the term 'severe disability or severe medical condition' has the same meaning in this Instrument as it does in Part 2.5 of the *Social Security Act 1991*, where the term is used in the context of qualification provisions relating to carer payment.

## **Consultation**

The Department of Human Services was consulted in relation to the 2010 Determination.

The Instrument is substantially the same as the 2010 Determination with the changes relating to terminology only. It was therefore unnecessary to undertake further consultation in relation to this instrument.

## **Regulatory Impact Analysis**

This Instrument does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Instrument 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*

This Legislative Instrument is the *Social Security (Administration) (Exempt Welfare Payment Recipients — Principal Carers of a Child) (Specified Activities) Instrument 2015* (the **Instrument**).

The 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**

Part 3B of the Act establishes an income management regime that applies to recipients of certain welfare payments. If a person is subject to the income management regime under Part 3B, the Secretary will deduct amounts from the person's relevant welfare payments and credit those amounts to the person's income management account. The Secretary may then debit amounts from the person's income management account, in accordance with Part 3B, for the purpose of taking actions directed to meeting the priority needs of the person or his or her dependants, such as food, clothing and shelter, of the person and his or her dependants.

This Instrument replaces the *Social Security (Administration) (Exempt Welfare Payment Recipients — Persons with Dependent Children) (Specified Activities) Determination 2010* (the **2010 Determination**).

This Instrument is needed to replace the 2010 Determination following amendments to subsections 123UGD(2) and (3) of the *Social Security (Administration) Act 1999* (the **Act**).

These amendments remove references in Part 3B from 'dependent child of another person' and replaced it with the 'principal carer of a child'.

The change in terminology aligns the manner in which people with dependent children are treated for income management purposes with the broader approach to dependent children of most social security payments, by relying upon the concept of a 'principal carer'.

There are no changes to the number or range of exemption activities specified for principal carers in the Instrument from those specified for persons with dependent children in the 2010 Determination.

## *Human Rights Implications*

### The right to an education

Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 28 of the Convention on the Rights of the Child (CRC) recognise the right to an education. In recognition of this the ICESCR and CRC state that all primary education shall be *'compulsory and available free for all'* and the ICESCR states secondary education shall be made *'available and accessible to every child'*.

This Instrument recognises and promotes this right by encouraging principal carers to send their children to educational, social and school based activities to ensure their dependents receive an adequate level of education.

### The right to healthcare

Article 12 of the ICESCR recognises *'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'*. Article 24 of the CRC also recognises and acknowledges the right that children have access to appropriate facilities, treatment and rehabilitation of illness.

This Instrument recognises and promotes this right by encouraging principal carers to provide their dependents with an adequate standard of health care and medical treatment.

### The right to non-discrimination against people with a disability

Article 4 of the Convention on the Rights of Persons with Disability ensures and promotes *'the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability'*. Article 7 states that parties *'shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children'*.

This Instrument includes particular activities for principal carers of children with a disability. This is not intended to discriminate against children with disabilities but instead acknowledges the special needs of children with disability who may not be able to attend the specified social and education activities.

### Conclusion

The Instrument is compatible with human rights. It will assist in the protection of human rights, in particular the rights of a child by ensuring that responsible parenting practices are being applied by encouraging education and health care for vulnerable children. The exemptions in this Instrument encourage socially responsible behaviour to ensure principal carers are meeting the needs of their dependents.

The Instrument has been drafted to ensure that any limitation of freedom of expenditure and human rights is reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation.

**The Hon Christian Porter MP, Minister for Social Services**