

EXPLANATORY STATEMENT

Social Security (Administration) Act 1999 *Social Security (Administration) (Priority Needs — Toys) Specification 2020*

Purpose

Paragraph 123TH(1)(q) of the *Social Security (Administration) Act 1999* (the Act) allows the Minister for Families and Social Services to specify, by legislative instrument, that certain goods and services are priority needs for the purposes of the Act.

The effect of the *Social Security (Administration) (Priority Needs — Toys) Specification 2020* (this instrument) is to specify that toys are priority needs for the purposes of Income Management under Part 3B of the Act.

Background

Part 3B of the Act establishes an Income Management regime that applies to recipients of certain welfare payments. If a person is subject to Income Management under Part 3B, the Secretary must deduct amounts from the person's relevant welfare payments and credit those amounts to 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.

Toys are not included in the list of priority needs set out in subsection 123TH(1). Paragraph 123(1)(q) gives the Minister the power to specify by legislative instrument anything else that is considered to be a priority need.

This instrument specifies that toys that meet the criteria in section 3 are priority needs for the purposes of paragraph 123TH(1)(q) of the Act. This enables the Secretary to have regard to toys, when directing funds for the purposes of debits from Income Management accounts under Division 6 of Part 3B of the Act.

As such, toys will be priority needs when the Secretary exercises the power in subsection 123YA(2) of the Act to take appropriate action to direct funds toward meeting the priority needs of a person, their partner, their children or dependents.

Toys that are priority needs include sporting equipment that keep children active, games that assist children in school and help learn literacy and numeracy skills, and toys that encourage children to use their imagination.

The *Social Security (Administration) (toys are a priority need) Specification 2010* (the 2010 instrument) is due to sunset on 1 April 2020 and will be repealed by this instrument. This instrument is substantially in the same terms as, and will replace, the 2010 instrument on repeal.

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 is 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.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

Consultation

Ongoing consultation and engagement determined that the 2010 instrument was operating effectively and that there was no need for a change in policy. The instrument will have a minor regulatory impact on businesses, organisations, individuals or other Government agencies.

Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement (OBPR Reference: 26315).

Explanation of the provisions

Section 1 provides that the name of this instrument is the *Social Security (Administration) (Priority Needs — Toys) Specification 2020*.

Section 2 provides that this instrument commences on the day after this instrument is registered on the Federal Register of Legislation.

Section 3 provides that the authority for making this instrument is paragraph 123TH(1)(q) of the Act.

Section 4 contains definitions of certain terms used in this instrument.

Act is defined to mean the *Social Security (Administration) Act 1999*.

toys is defined to mean an object that does the following

- provide opportunities for physical activity and develop gross-motor skills; or
- promote literacy, numeracy, thinking skills and social skills; or
- help children develop fine motor skills and imagination; or
- encourage creative play, role modelling, language development and fun.

Section 5 in conjunction with **Schedule 1** operates to repeal the 2010 instrument.

Section 6 specifies that toys are priority needs for the purposes of paragraph 123TH(1)(q) of the Act.

Senator the Hon Anne Ruston, Minister for Families and Social Services

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Priority Needs — Toys) Specification 2020

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

The *Social Security (Administration) (Priority Needs — Toys) Specification 2020* (this instrument) is made under paragraph 123TH(1)(q) of the *Social Security (Administration) Act 1999 (the Act)* and replaces the previous *Social Security (Administration) (toys are a priority need) Specification 2010*, which is due to sunset on 1 April 2020.

Paragraph 123TH(1)(q) of the *Act* allows the Minister for Families and Social Services to specify, by legislative instrument, that certain goods and services are priority needs for the purposes of the Act.

The effect of this instrument is to specify that toys are priority needs for the purposes of an Income Management regime under Part 3B of the Act. This instrument is substantially in the same terms as, and will replace, the 2010 instrument on repeal.

The key objectives of Income Management under the Act are to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependents;
- help affected welfare payment recipients to budget so that they can meet their priority needs;
- reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography;
- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse by others seeking access to their welfare payments; and
- encourage socially responsible behaviour, particularly in the care and education of children.

Human rights implications

The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises *'the right of everyone to social security, including social insurance'*.

The UN Committee on Economic, Social and Cultural Rights has stated that implementing this right requires a country to, within its maximum available resources, 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 does not reduce the amount of a person's social security entitlement. Rather, it provides a mechanism to ensure that certain recipients of social security entitlements use a proportion of their entitlement to acquire priority needs for children, such as toys that help with their stages of development and emerging abilities.

The right to a private life

Article 17 of the *International Covenant on Civil and Political Rights* sets out the right to a private life. It prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home.

By specifying criteria for toys that can be purchased using a person's quarantined portion of their Income Management funds, this instrument limits the right to a private life. This limitation on the right to a private life is directly related to the objectives of ensuring that an Income Management recipient can meet the priority needs of their children or dependants by spending a portion of their welfare payments on sporting equipment and games that assist children in their development at school.

Therefore, any restriction on a person's right to private life is reasonable and proportionate as it assists affected welfare payment recipients to budget so that they can meet the priority needs of them, and any children in their care.

The right to an adequate standard of living

Article 11(1) of the ICESCR states that everyone has the right to *'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'* and that *'appropriate steps'* be taken to *'ensure the realization of this right'*. Further to this, article 11(2) of the ICESCR states that *'measures, including specific programmes,'* should be taken in *'recognizing the fundamental right of everyone to be free from hunger'*.

Income Management ensures that money is available for priority goods such as food, clothing and housing, and provides assistance to help people to budget for their circumstances. This instrument supports that right by ensuring people have sufficient resources to purchase priority needs, such as children's toys to assist with their childhood development and maintain an adequate standard of living.

The rights of children

By ensuring that a portion of income support payments is used to cover essential goods and services such as children's toys, Income Management can improve living conditions for the children of income support recipients.

Under this instrument, toys that are priority needs include sporting equipment that keep children active, games that assist children in school and help learn literacy and numeracy skills, and toys that encourage children to use their imagination. It thereby advances the right of children to benefit from social security, the right of children to the highest attainable standard of health and the right of children to adequate standards of living (articles 26, 24 and 27 of the Convention on the Rights of the Child, respectively).

The right to self-determination

Article 1 of the ICESCR states that *'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'*.

Under Income Management, a specified percentage of a recipient's welfare payment must be spent on priority goods. While this measure does limit a person's ability to freely dispose of all of their resources, it does not impact on their right to freely pursue their economic, social or cultural development. This limitation is to ensure that the essential needs of vulnerable people and their children are met, and provide them with more financial stability, so they can better pursue their economic, social and cultural development.

Conclusion

This instrument is compatible with human rights. It advances the protection of human rights by providing a definition of 'toys' to ensure that a person on Income Management is able to direct their welfare payment towards priority needs, including the needs of their children.

To the extent that this instrument may limit human rights those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation and encouraging socially responsible behaviour. This ensures that those on Income Management recipients are able to direct their welfare payments towards meeting the priority needs of their children.

Senator the Hon Anne Ruston, Minister for Families and Social Services