

EXPLANATORY STATEMENT

Social Security (Administration) Act 1999
Social Security (Administration) (Excluded Goods — section 123TI)
Specification 2020

Purpose

Paragraph 123TI(1)(d) 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 are excluded goods for the purposes of the Act.

The effect of the *Social Security (Administration) (Excluded Goods — section 123TI) Specification 2020* (this instrument) is to specify that home-brew concentrate and home-brew kits are excluded goods 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 and any dependants.

Part 3B of the Act prohibits the Secretary from making a payment if there are reasonable grounds to believe that the whole or part of the amount paid will be used to acquire excluded goods or excluded services.

Home-brew concentrate and home-brew kits do not fall within the definition of 'alcoholic beverage' and are not listed as excluded goods under subsection 123TI(1) of the Act. 'Alcoholic beverage' is defined under subclause 1(1) of Schedule 1 of the Act as a beverage that contains more than 1.15 per cent by volume of ethyl alcohol.

Home-brew concentrate and home-brew kits are sold by a range of merchants, including small independent merchants and some supermarkets. Apart from the operation of *Social Security (Administration) (Excluded Goods — section 123TI) Specification 2010* (the 2010 instrument) and this instrument, Income Managed welfare recipients could buy home-brew concentrate and home-brew kits using their Income Managed funds.

This instrument aims to restrict the sale of home-brew concentrate and home-brew kits in areas that are subject to Income Management. Restricting the sale of the home-brew concentrate and home-brew kits would support the intent of Income Management, by further minimising the harm caused by alcohol misuse and associated violence.

The 2010 instrument is due to sunset on 1 April 2020 and will be repealed by this instrument.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 its 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) (Excluded Goods — section 123TI) 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 123TI(1)(d) 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*.

fermenter is defined to mean a container that could be used for the purposes of fermentation.

home-brew concentrate is defined to mean either:

- a substance, that includes malt and hops, ordinarily used for brewing beer; or
- wort; or
- grape concentrate ordinarily used for making wine.

home-brew kit is defined to mean a kit that includes all of the following:

- a fermenter;
- an airlock;
- a thermometer.

Section 5 in conjunction with **Schedule 1** operates to repeal the *Social Security (Administration) (Excluded Goods — section 123TI) Specification 2010*.

Section 6 specifies that home-brew concentrate and home-brew kits are excluded goods under paragraph 123TI(1)(d) 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) (Excluded Goods — section 123TI) 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) (Excluded Goods — section 123TI) Specification 2020* (this instrument) is made under paragraph 123TI(1)(d) of the *Social Security (Administration) Act 1999* (the Act) and replaces the previous *Social Security (Administration) (Excluded Goods — section 123TI) Specification 2010* (the 2010 instrument), which is due to sunset on 1 April 2020.

Paragraph 123TI(1)(d) of the Act allows the Minister for Families and Social Services to specify, by legislative instrument, that certain goods are excluded goods for the purposes of the Act.

The effect of this instrument is to specify that home-brew concentrate and home-brew kits are excluded goods 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'.

Home-brew concentrate and home-brew kits do not contain alcohol and therefore are not excluded from transactions involving Income Managed funds. This instrument aims to restrict the sale of home-brew concentrate and home-brew kits, to ensure the effective restriction of alcohol, in areas that are subject to Income Management.

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 and reduce the amount of money available for alcohol by restricting the sale of the home-brew concentrate and home-brew kits. This supports the intent of Income Management, by further minimising the harm caused by alcohol misuse and associated social harm.

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 restricting the sale of the home-brew concentrate and home-brew kits for the recipients on the Income Management regime, this instrument limits the right to a private life. Income Management is targeted to communities where high levels of welfare dependence exist alongside high levels of social harm. This limitation on the right to a private life is directly related to the objectives of reducing the harm caused by alcohol misuse. This is because the limitations put in place restrict transactions at businesses selling home-brew concentrate and home-brew kits that contribute to such harm.

Therefore, any restriction on a person's right to private life is reasonable and proportionate as it minimises the harm caused by alcohol misuse and associated social harm and encourages socially responsible behaviour.

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 needs 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 goods by restricting the sale of home-brew concentrate and home-brew kits in areas that are subject to Income Management. This minimises the harm caused by alcohol abuse and improves the standard of living for people living in communities with high levels of social harm.

The rights of children

By ensuring that a portion of income support payments is used to cover essential goods and services and restricting things like home-brew concentrate and home-brew kits, Income Management can improve living conditions for the children of income support payment recipients. 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, home-brew concentrate and home-brew kits sold by a range of merchants including small independent merchants and some supermarkets are restricted to those participants on the program. 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 are met, and minimise the harm caused by alcohol misuse and associated violence, 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 specifying that home-brew concentrate and home-brew kits are excluded goods for a person on Income Management, thereby minimising harm caused by alcohol misuse.

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 and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

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