

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Ordinary Waiting Period Exemption) Instrument 2021

Purpose

The *Social Security (Ordinary Waiting Period Exemption) Instrument 2021* (this Instrument) provides an exemption from the ordinary waiting period for a person who makes a claim for Parenting Payment, Youth Allowance or Jobseeker Payment.

This Instrument also amends the *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017* (2017 Instrument) to include the activity of making a claim for a social security payment by a person while they are in receipt of a COVID-19 Australian Government payment, or within 13 weeks of such receipt, as a specified activity for the purposes of sections 500WA, 549CA and 620 of the *Social Security Act 1991* (the Act)

Background

As part its response to the COVID-19 pandemic, the Australian Government is implementing a range of measures to help workers unable to earn income due to a COVID-19 state or territory public health order. These measures include a step down of the amount of the COVID-19 Disaster Payment prior to it ceasing as States and Territories reach certain milestones in double dose COVID-19 vaccination rates for people 16 years or older. This Instrument will enable persons transitioning off the COVID-19 Disaster Payment to gain access to certain social security payments without having to serve an ordinary waiting period, where they are otherwise qualified and payable. This approach aligns with existing rules that allow a person reclaiming a payment within 13 weeks of last receiving a social security payment to be exempt from the ordinary waiting period.

The ordinary waiting period is a period of one week that claimants are required to serve prior to receiving payment of income support, unless they are exempted. The ordinary waiting period is required to be served at the conclusion of any other applicable waiting period, such as the liquid assets test waiting period or newly arrived resident's waiting period. If no such periods apply, the ordinary waiting period is served from the day that would otherwise be the person's start day for the payment.

Some social security payments are subject to an ordinary waiting period, for example: parenting payment under section 500WA of the Act, youth allowance under section 549CA of the Act, and jobseeker payment under section 620 of the Act. However, under these sections, the Secretary of the Department of Social Services is able to exempt a person from the ordinary waiting period, provided the person is undertaking an activity of a kind specified in a legislative instrument for the purposes of paragraphs 500WA(3), 549CA(4) and 620(3) of the Act. Some activities have been specified for these paragraphs in the 2017 Instrument.

This instrument declares the act of claiming a relevant social security payment by those on or recently on a COVID-19 Disaster Payment within 13 weeks prior to claiming a social security payment subject to an ordinary waiting period, as a specified activity that will result in the person being exempt from the ordinary waiting period. It both declares activities for the purposes of the exemption, and additionally, provides a class exemption to persons who undertake those activities. This is because it is implied that those that qualify for a COVID-19 Disaster Payment are unable to work and are remaining home or quarantining due to a public health order, which is considered an appropriate activity. This instrument ensures as a result, there will generally be no break in assistance for people who transition from the COVID-19 Disaster payment to income support payments.

The Secretary is able to revoke or amend this Instrument at a future date if determined necessary.

Commencement

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

This Instrument amends the 2017 Instrument. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make an instrument includes the power to vary or revoke the instrument.

Consultation

As this Instrument is beneficial in nature, public consultation has not been undertaken. This Instrument has the effect of exempting people making claims for parenting payment, youth allowance and jobseeker payment from the ordinary waiting period that would otherwise apply.

Services Australia has been consulted in relation to the implementation of this Instrument.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has confirmed that this Instrument does not require a Regulatory Impact Statement (OBPR Reference 44763).

This Instrument will operate in a beneficial manner. It is not regulatory in nature, will not impact business activity and will have no, or minimal, compliance cost or competition impact.

Explanation of the provisions

Section 1 provides that the name of this Instrument is the *Social Security (Ordinary Waiting Period Exemption) Instrument 2021*.

Section 2 provides for the commencement of this Instrument. This Instrument commences on the day it is registered on the Federal Register of Legislation.

Section 3 describes the authority for making this Instrument as sections 500WA, 549CA and 620 of the Act.

Section 4 defines ‘Act’ as the *Social Security Act 1991*.

Section 5 provides that any instrument specified in the Schedule to this Instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this Instrument has effect according to its terms.

Section 6 provides for the exemptions from the ordinary waiting period for parenting payment, youth allowance and jobseeker payment respectively. The exemption is given by class, which is permitted by section 13 of the *Legislation Act 2003*. The exemptions in section 6 are of a legislative character because they determine the law or alter the content of the law, rather than giving exemptions in relation to particular cases.

Specifically, the class of people undertaking the activity specified in subparagraph 7(a)(ii) or 7(a)(iii) of the 2017 Instrument (as amended by this Instrument) are exempted from the ordinary waiting period under paragraphs 500WA(2)(b), 549CA(3)(b) and 620(2)(b).

This means that a person who lodges a claim for a social security payment during any period they are in receipt of the COVID-19 Disaster Payment, or a period of up to 13 weeks following when they were last in receipt of the COVID-19 Disaster Payment, is exempted from an ordinary waiting period for parenting payment, youth allowance and jobseeker payment, without the need for a decision-maker to make this decision in respect of each affected individual.

Schedule 1 – Amendments to other instruments

Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017

Item 1 inserts a new definition into the 2017 instrument, defining ‘COVID-19 Australian Government payment’. The term means a payment or grant of financial assistance that is payable by the Commonwealth covered by item 492 of the table in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*. This item covers the COVID-19 Disaster Payment, and ensures any references to a COVID-19 Australian Government payment in the instrument will include anyone who is entitled to or receiving the ‘COVID-19 Disaster Payment’.

Item 2 is a consequential amendment resulting from the introduction of additional activities by new subparagraphs 7(a)(ii) and 7(a)(iii). This item replaces the wording at paragraph 7(a) to say that the following “activities are” specified as set out in the following subparagraphs.

Item 3 is consequential, and modifies subparagraph 7(a)(i) to allow for the activities created by new subparagraph 7(a)(ii) and 7(a)(iii) to be listed as other specified activities under the section.

Item 4 amends the 2017 Instrument to insert new subparagraphs 7(a)(ii) and 7(a)(iii) at the end of section 7.

New subparagraph 7(a)(ii) includes the activity of making a claim for a social security payment, during a period the person was entitled to a COVID-19 Disaster Payment, as a specified activity for the purposes of paragraphs 500WA(2)(a), 549CA(3)(a) and 620(2)(a) of the Act.

New subparagraph 7(a)(iii) includes the activity of making a claim for a social security payment, on a day within 13 weeks following the day the person was last entitled to a COVID-19 Australian Government payment, as a specified activity for the purposes of paragraphs 500WA(2)(a), 549CA(3)(a) and 620(2)(a) of the Act. This will allow people who were entitled to but no longer receiving a COVID-19 Disaster Payment appropriate time to claim a social security payment without serving an ordinary waiting period, even where they may be required to serve other types of applicable waiting periods, such as the Liquid Assets Waiting Period, which may apply for up to 13 weeks for some social security payment claims.

Ray Griggs AO CSC, Secretary, Department of Social Services

Statement of Compatibility with Human Rights

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

Social Security (Ordinary Waiting Period Exemption) Instrument 2021

This 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 (Ordinary Waiting Period Exemption) Instrument 2021* (this Instrument) provides an exemption from the ordinary waiting period for a person who makes a claim for Parenting Payment, Youth Allowance or Jobseeker Payment.

This Instrument also amends the *Social Security (Exemptions from Non-payment and Waiting Periods – Activities) Specification 2017* (2017 Instrument) to include the activity of making a claim for a social security payment by a person while they are in receipt of a COVID-19 Australian Government payment, or within 13 weeks of such receipt, as a specified activity for the purposes of sections 500WA, 549CA and 620 of the *Social Security Act 1991* (the Act)

The Australian Government has implemented a range of measures in response to the COVID-19 pandemic. The COVID-19 Disaster Payment has been supporting Australian who have lost their jobs or had their hours of work reduced through lockdowns. As states and territories reach vaccination milestones and lockdowns come to an end, the payment will cease with some recipients likely to seek income support. This Instrument will enable those recipients to gain quicker access to certain social security payments, rather than having to serve an ordinary waiting period, where they are otherwise qualified and payable.

The ordinary waiting period is a period of one week that claimants are required to serve prior to receiving payment, unless they are exempted. The ordinary waiting period is required to be served at the conclusion of any other applicable waiting period, such as the liquid assets test waiting period or newly arrived resident's waiting period.

Some social security payments are subject to an ordinary waiting period, for example: parenting payment under section 500WA of the Act, youth allowance under section 549CA of the Act, and jobseeker payment under section 620 of the Act. However, under these sections, the Secretary of the Department of Social Services is able to exempt a person from the ordinary waiting period, provided the person is undertaking an activity of a kind specified in a legislative instrument for the purposes of paragraphs 500WA(3), 549CA(4) and 620(3) of the Act. Some activities have been specified for these paragraphs in the 2017 Instrument.

Human rights implications

This Instrument engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must 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 will operate beneficially, because claimants for social security payments will commence receiving payments earlier than would be the case without this Instrument. This Instrument does not disadvantage any person.

Conclusion

This Instrument engages the right to social security but is compatible with human rights as it supports a person's right to social security.

Ray Griggs AO CSC, Secretary, Department of Social Services