



Protocols for issuing Benefit Restriction Notices for outstanding warrants

Introduction

The *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025* provided changes to enable social security payments and concessions to be ceased under the *Social Security Act 1991* – Chapter 1, Part 1.3B, particularly 38M and 38MA, family assistance payments under the *A New Tax System (Family Assistance) Act 1999* – Part 3, Division 7, particularly sections 57GI and 57GIA, and parental leave pay under the *Paid Parental Leave Act 2010* – Chapter 6, Division 5, particularly sections 278B and 278BA, to alleged offenders in certain circumstances.

The amendments expand existing provisions relating to security notices, to enable certain Commonwealth payments and concession cards to be stopped where a person is subject to an outstanding arrest warrant for a serious violent or sexual offence, as defined in the *Criminal Code Act 1995* (Commonwealth Criminal Code).

The Benefit Restriction Notice measure created a ministerial power for a person's social security payment and/or concession card, family assistance payment, or paid parental leave payment, in very limited circumstances, to be cancelled where there is a warrant out for their arrest in respect of a serious violent or sexual offence, and they have not been arrested under that warrant.

How a Benefit Restriction Notice can be put in place

Where a person is the subject of an arrest warrant issued in Australia in respect of a serious violent or sexual offence, a senior AFP member or a member of a State or Territory police force whose rank is equivalent to the rank of a senior AFP member may submit a written request for the government to consider cancelling social security or family payments and concessions.

For the purposes of this provision, the definition of a senior AFP member adopts the meaning from the Commonwealth Criminal Code and is taken to mean the following:

- the Commissioner of the Australian Federal Police; or
- a Deputy Commissioner of the Australian Federal Police; or
- an AFP member of, or above, the rank of Superintendent.

This also extends to the equivalent in State and Territory police agencies.



For such a request to be considered, strict criteria must be met:

- the person must be alleged to have committed a 'serious violent or sexual offence' within the meaning of the Commonwealth Criminal Code – offences in this category include murder; serious personal injury, sexual assault; and making child abuse materials;
- a warrant for the person's arrest must have been issued; and
- the person must be at large and evading the police.

The decision to issue a Benefit Restriction Notice will only be made by the Minister administering the *Australian Federal Police Act 1979* (the AFP Minister). The effect of a Benefit Restriction Notice is to cancel a person's social security, family assistance or paid parental leave payments and concessions cards (social security payments).

Benefit Restriction Notices are a measure of last resort. All reasonable steps to execute an arrest warrant must be undertaken prior to the consideration of requesting a Benefit Restriction Notice be issued.

A Benefit Restriction Notice will only be issued in exceptional circumstances, by the AFP Minister, to ensure people who are subject to an outstanding arrest warrant for a serious violent or sexual offence cannot continue to benefit from social security payments, which might be assisting them in evading the authorities.

Circumstances where a Benefit Restriction Notice can be issued

Serious violent or sexual offences are defined in Division 395 of the Schedule to the Commonwealth Criminal Code *Criminal Code Act 1995* (Division 395). These offences are very serious crimes, which are punishable by imprisonment for life or at least seven years. They involve offences causing loss of life or serious injury, sexual assaults or child sexual offences.

The definition of a serious violent or sexual offence is as follows:

serious violent or sexual offence means an offence against a law of the Commonwealth, a State or a Territory where:

- (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and
- (b) the particular conduct constituting the offence involved, involves or would involve, as the case requires:
 - (i) loss of a person's life or serious risk of loss of a person's life; or
 - (ii) serious personal injury or serious risk of serious personal injury; or
 - (iii) sexual assault; or
 - (iv) sexual assault involving a person under 16; or
 - (v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or
 - (vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or
 - (vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.



Procedure for issuing a Benefit Restriction Notice

The procedure for issuing a Benefit Restriction Notice requires the following steps, in the order in which they are set out below.

Step 1: Senior AFP member or a member of a State or Territory police force whose rank is equivalent to the rank of a senior AFP member makes a written request for a Benefit Restriction Notice

A Benefit Restriction Notice will only be requested where all other reasonable steps to execute the warrant have been exhausted. These steps should be outlined in the written request to the AFP Minister.

Examples of reasonable steps to execute a warrant could include:

attempts to execute the warrant at different times or locations (subject to any conditions in the warrant),

attempts to ascertain the individual's location, including using physical and electronic surveillance,

obtaining information from third parties, such as financial institutions (ATM withdrawals for example) or people who may know the individual's location,

making enquiries of domestic or foreign law enforcement agencies or other government agencies.

In the circumstance where a warrant for a serious violent or sexual offence is outstanding, and a senior police official is satisfied all other reasonable steps to execute the warrant have been exhausted, a senior member of the AFP as defined in the *Criminal Code Act 1995* (Part 100.1) or a senior member of a State or Territory police force can make a written request for a Benefit Restriction Notice. This ensures that a Benefit Restriction Notice request is only made by a sufficiently qualified and experienced police official.

A Benefit Restriction Notice request can be made to any of the following:

- the AFP Minister,
- the Minister for Social Services,
- the Minister administering the Human Services (Centrelink) Act 1997,
- the Department of Social Services,
- Services Australia.

Step 2: AFP Minister requests that the relevant policing agency provide updates on investigation

The AFP Minister will not take a Benefit Restriction Notice request further unless the relevant policing agency making the Benefit Restriction Notice request confirms their agreement to inform the AFP Minister once:

- a person subject to a Benefit Restriction Notice has been arrested; or
- the relevant warrant and/or the criminal charge has been withdrawn.

This will ensure that, if a Benefit Restriction Notice is issued, the AFP Minister will remain informed about matters which may require the Benefit Restriction Notice to be revoked.



Step 3: AFP Minister seeks advice from Services Australia CEO in relation to dependants

Prior to issuing a Benefit Restriction Notice, the AFP Minister must, in all circumstances, have regard to whether the person has any dependants, and the effect a Benefit Restriction Notice would have on those dependants. The Secretary of the Department administered by the AFP Minister will request the advice from Services Australia CEO.

This advice must be considered as part of the decision-making process and a Benefit Restriction Notice cannot be issued before this advice is received from Services Australia.

When providing advice on the likely effect of the Benefit Restriction Notice on the person's dependants, the Services Australia CEO will advise:

- the age of the dependant(s),
- their living arrangements, including if they rely on rent assistance payments,
- whether the family has any other source of income,
- the type of social security payments or benefits the family receives,
- the risk assessment outcome including consideration and potential impact on the safety of the service delivery network.

A Benefit Restriction Notice will not be progressed until the impact on dependants has been considered. A Notice will not be issued if the Services Australia CEO is unable to confirm that the dependants have another suitable source of income. Where appropriate, the Minister for Social Services may recommend special adjustments to ensure continued support for dependants, recognising that each situation will differ.

Step 4: AFP Minister considers whether to issue Benefit Restriction Notice

The AFP Minister must consider certain matters before giving the Benefit Restriction Notice to the Social Services Minister.

Before giving a Benefit Restriction Notice, the AFP Minister **must** consider at least two things:

- (a) the extent to which the person is likely to be a threat or danger to the community while the person is not arrested; and
- (b) the likely effect of the Benefit Restriction Notice on the person's dependants, if the AFP Minister is aware of those dependants.

The AFP Minister should also have regard to any other relevant considerations, including the overall circumstances of the case.



Factors that the AFP Minister should consider in deciding whether to give a Benefit Restriction Notice include but are not limited to:

- the impact of the Benefit Restriction Notice on the person, the person's dependants (if any), and any other persons, having regard to the overall known circumstances of those persons,
- the nature and relative seriousness of the offending,
- any barriers to voluntary surrender, including geographic or logistical challenges (such as an inability to travel due to health or financial constraints),
- the person's criminal history and past conduct,
- the period of time the warrant has remained outstanding,
- the person's medical and health conditions,
- the extent (if any) to which the issuing of a Benefit Restriction Notice could exacerbate a threat or danger to the community (including to police and Services Australia staff),
- the extent to which a Benefit Restriction Notice is necessary to assist in apprehending the individual, including whether all other reasonable steps to execute the warrant have been exhausted,
- any other consideration that may make it undesirable or unnecessary to give the Benefit Restriction Notice. This may include consideration of whether issuing a Benefit Restriction Notice could exacerbate a threat or danger to an individual, particularly where family or domestic violence is a factor.

The AFP Minister will also consider the administrative burden issuing a Benefit Restriction Notice will have on their office and the relevant agencies. As discussed below, once a Benefit Restriction Notice is issued, it must be reviewed on a three-monthly basis to ensure that it remains necessary and proportionate and may also be subject to written requests for revocation at any time.

What does a threat or danger to the community mean?

A Benefit Restriction Notice will generally only be issued where a person presents a significant and current risk of serious harm to the community.

A person is considered a threat or danger if they are likely to cause harm to the community. The AFP Minister will consider the type of harm as well as the probability of that harm occurring or escalating while the person is evading arrest in respect of the warrant. This will involve an assessment of the alleged offence committed and the person's circumstances.

The Department of Home Affairs will consult with Services Australia and other relevant agencies to consider the implementation of a proposed Benefit Restriction Notice. Services Australia will undertake its own risk assessment prior to a Benefit Restriction Notice being issued, including consideration of the safety of its service delivery network.

Step 5: AFP Minister issues Benefit Restriction Notice

If the AFP Minister is satisfied it is appropriate to do so, they will provide written notice (the Benefit Restriction Notice) to the Social Services Minister, who will subsequently provide copies to the Social Services Secretary and the Services Australia CEO. Services Australia must cancel the person's social security payments from the date the Benefit Restriction Notice is issued and provide written notice to the person that cancellation has occurred.



Step 6: Services Australia engages with dependants

Where a person subject to a Benefit Restriction Notice has dependants, Services Australia will proactively engage with those dependants or their other carers while the Benefit Restriction Notice remains in effect, to ensure they are able to access any available Commonwealth payments or concessions, and otherwise have access to a suitable source of income. If Services Australia becomes aware of new information that may be relevant to whether the Benefit Restriction Notice should remain in force, it will give the information to the AFP Minister (as relevant) to be considered in the review of a Benefit Restriction Notice or any proposed revocation of a Benefit Restriction Notice.

Step 7: Department of Home Affairs conducts internal review of Benefit Restriction Notice

After a Benefit Restriction Notice has been given for a person, the Department of Home Affairs will conduct three-monthly reviews of the appropriateness of the notice remaining in force. The purpose of these reviews is to ensure the Benefit Restriction Notice continues to serve a legitimate law enforcement purpose. As part of the review process, the Department of Home Affairs will seek updated information about the status of the person from the entity who made the cancellation request and will also seek updated advice from Services Australia about dependants, or any other relevant information (such as whether the subject of the Benefit Restriction Notice has attempted to lodge a new claim).

Step 8: Revocation of a Benefit Restriction Notice

Benefit Restriction Notices remain in force until they are revoked by the AFP Minister.

The AFP Minister will revoke the Benefit Restriction Notice if they become aware that the legal basis for issuing the Benefit Restriction Notice no longer exists (for example, if the person has been arrested or becomes subject to bail conditions).

As noted above, the relevant policing agency who made the cancellation request will inform the AFP Minister once a person subject to a Benefit Restriction Notice has been arrested and/or the criminal charge has been withdrawn. Upon receipt of this information, the AFP Minister will revoke the Benefit Restriction Notice as soon as practicable and the revocation will take effect on the day it is made.

The AFP Minister may also revoke the Benefit Restriction Notice if, for any other reason, they no longer consider the Benefit Restriction Notice to be appropriate.

Where a Benefit Restriction Notice is revoked, the AFP Minister will provide written notice of the revocation to the Minister for Social Services, who will then provide copies to the Social Services Secretary and Services Australia CEO.

Request for revocation

At any time, a person who has had a Benefit Restriction Notice issued in their name, or a person acting on behalf of the person, for example a payment nominee or carer, may request in writing that the Benefit Restriction Notice is revoked. This request can be lodged via the Department of Home Affairs as the Department supporting the AFP Minister, or Services Australia as the service delivery agency. The AFP Minister will consider the request and make a decision on whether or not to revoke the Benefit Restriction Notice within 14 days.



This process ensures that a person subject to a Benefit Restriction Notice has access to appropriate avenues to seek revocation of the Benefit Restriction Notice.

Judicial Review

Decisions to issue or not to revoke a Benefit Restriction Notice are administrative decisions that can be challenged in Court by judicial review. Where a person wishes to challenge a Benefit Restriction Notice in Court, the Department of Social Services will consider any request for legal funding to assist the person with the cost of the litigation and to ensure they have suitable legal representation.

Decisions to cancel a person's social security payment and/or concession card, family assistance payment, or paid parental leave payment, resulting from the Benefit Restriction Notice is not a reviewable decision, either internally through review processes, or externally through the Administrative Review Tribunal. A person remains ineligible for a social security payment and/or concession card, family assistance payment, or paid parental leave payment while a Benefit Restriction Notice remains in force.

Ombudsman monitoring

The Commonwealth Ombudsman may investigate administrative decisions made by an agency under social security law in response to a complaint or an Ombudsman own motion investigation, and will have a role in the oversight of relevant agencies' actions in relation to advising the Home Affairs Minister to issue a Benefit Restriction Notice.

When a Benefit Restriction Notice is issued, the Home Affairs Minister will notify the Commonwealth Ombudsman and provide information relevant to the notice being issued, in accordance with relevant secrecy and privacy requirements. This should include information provided to the Home Affairs Minister by relevant agencies in order to influence the decision to issue a notice. This information should be sufficient for the Ombudsman to assess the reasonableness of the actions taken by relevant agencies prior to requesting a notice be issued in respect of an individual.

The Ombudsman will not be required to actively seek further information to form an initial view. However, in the event of a complaint or own motion investigation, the Ombudsman may request information from agencies in relation to individual cases.

The Ombudsman cannot oversee actions of a Minister or a State or Territory policing agency.

Review of application protocols

A review will be undertaken on the effectiveness and adherence to these protocols from 12-months from the commencement of the legislation enabling the provision. Reviews of new policies is a standard practice to ensure the intent of the policy is being followed.

