

2019-2020

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**CORONAVIRUS ECONOMIC SUPPORT AND RECOVERY (NO-ONE LEFT
BEHIND) BILL 2020**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Larissa Waters)

CORONAVIRUS ECONOMIC SUPPORT AND RECOVERY (NO-ONE LEFT BEHIND) BILL 2020

OUTLINE

The Bill consists of three schedules.

Schedule 1 directs the Finance Minister to create the Coronavirus Economic Support and Recovery Fund. This Fund would be required to invest in the arts and entertainment sector, the manufacturing sector and the renewable energy and electricity transmission sector. It also ensures that that investment cannot be used to subsidise investment in fossil fuel projects. Rules for the Fund must be in place by 30 June 2020. The Fund is to be financed by money appropriated by the Parliament, noting that the *Supply Act (No. 1) 2020-2021* and the *Supply Act (No. 2) 2020-2021* included a significant Advance to the Finance Minister to ensure sufficient appropriations are available to support the coronavirus economic response.

Schedule 2 expands the \$550 per fortnight COVID-19 supplement to recipients of the disability support pension and carer payment, and ensures that holders of temporary visas are eligible for the JobSeeker payment if they otherwise meet the criteria.

Schedule 3 creates limitations on the rules for the JobKeeper payment scheme, requiring that the Minister must, in creating rules for the JobKeeper scheme:

- Extend potential eligibility to all casual employees, regardless of period of employment
- Extend potential eligibility to all temporary visa holder employees
- Extend potential eligibility to intermittent workers with a demonstrated income history
- Not have the effect of excluding certain entities 100% owned by foreign sovereign governments or a foreign sovereign government agency within Australia as eligible employers
- Not have the effect of excluding higher education providers as eligible employers
- Facilitate prompt back payment of newly eligible employees and employers.

NOTES ON CLAUSES

Clause 1: Short Title

This clause is a formal provision which provides for the Act to be cited as the *Coronavirus Economic Support and Recovery (No-one Left Behind) Act 2020*.

Clause 2: Commencement

This clause states that the whole of this Act will commence on the day after it receives the Royal Assent.

Clause 3: Schedules

This clause gives effect to the Schedules. It provides that legislation that is specified in the Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1– Coronavirus Economic Support and Recovery Fund

Item 1:

Subitem 1 establishes the Coronavirus Economic Support and Recovery Fund (the Fund).

Subitem 2 requires the Finance Minister (the Minister) to make rules for the establishment, operation and governance of the Fund.

Subitem 3 provides that the Fund must provide a \$2.3 billion recovery package for the arts and entertainment sector, a \$12 billion manufacturing investment, \$2 billion for the Australian Renewable Energy Agency and \$6 billion for electricity transmission investment.

Subitem 4 puts limitations on both the manufacturing and electricity transmission investments of the Fund. The Fund must not fund or subsidise the extraction of or exploration for coal, oil or natural gas; must not fund or subsidise manufacturing projects that rely solely or primarily on the direct use of coal, oil or natural gas; must not fund or subsidise manufacturing projects that result in the manufacture of products that rely solely or primarily on the direct use of coal, oil and natural gas and must not fund or subsidise new or existing coal, oil or natural gas power generation projects. Projects which rely on the indirect use of coal, oil or natural gas, such as facilities that rely primarily on electricity, or projects for the conversion of direct fossil fuel use processes to electric or hydrogen-based processes, would be eligible investments.

Subitem 5 states that money for the Fund to fulfill its requirement under subitem 3 is to be from funds appropriated by Parliament for the purposes of the Act. The note to the subitem provides an indication of an appropriate source.

Subitem 6 puts a requirement on the Minister to make the rules that comply with subitems 2 to 4 by 30 June 2020.

Subitem 7 defines the Finance Minister as meaning the Minister administering the *Public Governance, Performance and Accountability Act 2013* for the purposes of item 1.

Schedule 2—Expanding social security support

Part 1—Expanding eligibility for COVID-19 supplement

Social Security Act 1991

Item 1:

Proposed subsection 121(1) expands eligibility for the COVID-19 supplement to recipients of a disability support pension. The COVID-19 supplement increase would begin and be backdated to 27 April 2020.

Proposed subsections 121(2) and (3) sets the criteria for the cessation of the COVID-19 supplement to disability support pension recipients and aligns it with existing cessation criteria for other COVID-19 supplement recipients. This is the longer of the initial period (ie. 6 months from 25 March 2020) or the extended period, noting that the Minister may extend indefinitely as long they are satisfied that the extension is in response to circumstances relating to COVID-19.

Proposed subsections 121(4) through (8) determines both the amount of the COVID-19 supplement for disability support pension recipients and the process by which the Minister can vary it. The fortnightly amount of the COVID-19 supplement will be \$550 beginning 27 April 2020 and will continue to be \$550 unless the amount is varied.

The Minister may by legislative instrument vary the amount of the COVID-19 supplement for disability support pension recipients within the initial or extended period, including to nil, but not retrospectively.

Item 2:

Proposed subsection 211(1) expands eligibility for the COVID-19 supplement to recipients of a carer payment. The COVID-19 supplement increase would begin and be backdated to 27 April 2020.

Proposed subsections 211(2) and (3) sets the criteria for the cessation of the COVID-19 supplement to carer payment recipients and aligns it with existing cessation criteria for other COVID-19 supplement recipients. This is the longer of the initial period (ie. 6 months from 25 March 2020) or the extended period, noting that the Minister may extend indefinitely as long they are satisfied that the extension is in response to circumstances relating to COVID-19.

Proposed subsections 211(4) through (8) determine both the amount of the COVID-19 supplement for carer payment recipients and the process by which the Minister can vary it. The fortnightly amount of the COVID-19 supplement will be \$550 beginning 27 April 2020 and will continue to be \$550 unless the amount is varied.

The Minister may by legislative instrument vary the amount of the COVID-19 supplement for carer payment recipients within the initial or extended period, including to nil, but not retrospectively.

Item 3:

Item 3 makes clear that these changes apply in respect to disability support pension payments and carer payments beginning from 27 April 2020, and therefore already received. Arrangements are to be

made to ensure that all eligible payment recipients from that date receive their full supplement amounts for each intervening fortnight between the date of Royal Assent and 27 April 2020.

Part 2—Expanding jobseeker eligibility

Social Security Act 1991

Item 4:

Item 4 makes amendments to subparagraph 593(5)(b)(ii) of the *Social Security Act 1991* to ensure eligibility for JobSeeker in the Coronavirus period may extend to Australian resident temporary visa holders within the meaning of a temporary visa contained in the *Migration Act 1958*.

Social Security (Administration) Act 1999

Item 5:

Item 5 inserts a new section 31B to the *Social Security (Administration) Act 1999* to ensure eligibility for JobSeeker in the Coronavirus period may extend to Australian resident temporary visa holders within the meaning of a temporary visa contained in the *Migration Act 1958*.

Item 6:

Item 6 inserts a new section 28A that provides that if a person were to make a claim for JobSeeker, and that person was first eligible for JobSeeker according to subsection 593(5) of the *Social Security Act 1991* on any day prior to the date of Royal Assent, and was newly qualified on the basis of holding a temporary visa as outlined in Items 4 & 5, then the start day of that payment would be the latest of 27 April 2020 and the day that they would have qualified under subsection 593(5).

Arrangements are to be made to ensure that all eligible payment recipients receive their full JobSeeker amounts and any associated payments for each intervening fortnight between the date of Royal Assent and 27 April 2020 or the day they would have qualified for JobSeeker under subsection 593(5).

Schedule 3—Expanding jobkeeper eligibility

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

Item 1:

Item 1 inserts a new section 7A that sets out that any rules relating to a payment intended to assist businesses affected by COVID-19 to cover the cost of wages of their employees (jobkeeper scheme), under the *Coronavirus Economic Response (Payments and Benefits) Act 2020*, must comply with the requirements contained in this item.

Subsection 7A(2) inserts a new requirement that any jobkeeper scheme that provides for classes of employees in respect of which payments are to be made, must include eligibility for all casual employees regardless of the length of employment prior to March 1 2020, as long as it is reasonable to assume that the individuals would have continued to be an employee of the entity had it not being

impacted by COVID-19.

Subsection 7A(3) inserts a new requirement that any jobkeeper scheme that provides for classes of employees in respect of which payments are to be made, must include eligibility for all employees who are holders of a temporary visa (within the meaning of the *Migration Act 1958*) and a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

Subsection 7A(4) inserts a new requirement that any jobkeeper scheme must include provisions by which intermittent workers would be eligible for the receipt of payment when they would otherwise be ineligible on the basis of not being employed or being employed by an ineligible employer as of 1 March 2020, provided they meet the gross income test.

Subsections 7A(5) and (6) insert a new requirement that any jobkeeper scheme must not exclude eligible employer entities solely or predominantly on the basis that the entity is an Australian resident or resident trust estate for tax purposes and the body politic of a foreign country or a foreign government agency holds a 100 per cent total participation interest in that entities.

Subsection 7A(7) inserts a new requirement that any jobkeeper scheme must not have eligibility requirements that apply only to higher education providers or apply thresholds to higher education providers that are different from the thresholds applied to other similar entities. This would also prevent the application of rules that are substantially different in their application to higher education providers compared with other entities where the effect is to make it impractical or unlikely that higher education providers satisfy eligibility requirements.

Subsection 7A(8) makes clear that rules must be provided to enable the payment of eligible entities and employees of entities who would have been eligible under subsections (1) through (7) for any period between 30 March 2020 and the date of Royal Assent.

Subsections 7A(9) and (10) confirm that these sections do not limit the jobkeeper scheme rules from providing other criteria in relation to classes of entities or employees, or providing further eligibility requirements. However these rules must not impose requirements in relation to those classes of employees or entities that would have the effect of making it impractical or unlikely that a payment could be made to that class of employee or entity or would be substantially different from requirements imposed in relation to other similar classes of employees or entities.

Statement of Compatibility with Human Rights

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

Coronavirus Economic Support and Recovery (No-One Left Behind) Bill 2020

This Bill 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 Bill

The Bill consists of three schedules.

Schedule 1 directs the Finance Minister to create the Coronavirus Economic Support and Recovery Fund. This fund would be required to invest in the arts and entertainment sector, the manufacturing sector and the renewable energy and electricity transmission sector. It also ensures that that investment cannot be used to subsidize investment in fossil fuel projects. Rules for the Fund must be in place by 30 June 2020. The Fund is to be financed by money appropriated by the Parliament, noting that the Finance Minister's advance in relation to support for the coronavirus economic response may be an appropriate source of such funding.

Schedule 2 expands the \$550 per fortnight COVID-19 supplement to recipients of the disability support pension and carer payment, and ensures that holders of temporary visas are eligible for the JobSeeker payment.

Schedule 3 creates limitations on the rules for the JobKeeper payment scheme, requiring that the Minister must, in creating rules for the JobKeeper scheme:

- Extend potential eligibility to all casual employees, regardless of period of employment
- Extend potential eligibility to all temporary visa holder employees
- Extend potential eligibility to intermittent workers with a demonstrated income history
- Not have the effect of excluding certain entities 100% owned by foreign sovereign governments or a foreign sovereign government agency within Australia as eligible employers
- Not have the effect of excluding higher education providers as eligible employers
- Facilitate prompt back payment of newly eligible employees and employers

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

Senator Larissa Waters