Explanatory Statement

Social Security (Australian Government Disaster Recovery Payment) Determination 2013 (No. 1)

The Australian Government Disaster Recovery Payment (the AGDRP) provides an immediate, one-off payment to Australians adversely affected by a major disaster.

Section 1061K of the Social Security Act 1991 (the Act) specifies the qualification criteria for the AGDRP. One of the qualification criteria requires a person to be “adversely affected by a major disaster”.

Subsection 1061L(1) of the Act provides that, for the purposes of the Act, “a person is adversely affected by a major disaster if the person is affected by the disaster in a way determined by the Minister in relation to the disaster”.

Subsection 1061L(2) of the Act provides that the “Minister may determine in writing, in relation to a major disaster, the circumstances in which persons are to be taken to be adversely affected by the disaster”.

Section 36 of the Act empowers the Minister to determine in writing that an event is a “major disaster” if the Minister is satisfied that an event is a disaster that has such a significant impact on individuals that a Commonwealth Government response is required.

The Minister has made a declaration under section 36 of the Act that applies to only the bushfires in the South-East and East of Tasmania that commenced on 3 or 4 January 2013 which as at 5 January 2013 covered the affected Local Government Areas of Sorell, Tasman and Glamorgan-Spring Bay.

The Social Security (Australian Government Disaster Recovery Payment) Determination 2013 (No. 1) (Determination (No. 1)) gives effect to the declaration referred to above and sets out the circumstances in which a person is to be regarded as “adversely affected” by the bushfires that affected the South-East and East of Tasmania.

Section 1 of Determination (No. 1) specifies the name of the determination.

Section 2 of Determination (No. 1) provides that it commences on the date after it is registered.

Section 3 of Determination (No. 1) contains definitions relevant to Determination (No. 1).

Section 4 of Determination (No. 1) provides that for the purposes of subsection 1061L(2) of the Act, a person is adversely affected by a major disaster mentioned in Schedule 1 if the person is affected in the way mentioned in Schedule 2.

Schedule 1 to Determination (No. 1) applies to only the bushfires in South-East and East Tasmania that commenced on 3 or 4 January 2013 which as at 5 January 2013 covered the affected Local Government Areas of Sorell, Tasman and Glamorgan-Spring Bay.

Schedule 2 to Determination (No. 1) provides six circumstances where a person is adversely affected by the major disaster referred to in Schedule 1.

The first circumstance is where the person is seriously injured as a direct result of the major disaster.

The second circumstance is where a person is an immediate family member of an Australian who is killed as a direct result of the major disaster.

The third circumstance is where the person’s principal place of residence has been destroyed or has sustained major damage as a direct result of the major disaster.

The fourth circumstance is where a person has been unable to gain access to his or her principal place of residence for at least 24 hours because:

a) access to the place of residence is cut off; or

b) the person is unable to leave a place affected by the disaster.
The fifth circumstance is where a person’s principal place of residence was without a particular utility service for a continuous period of 48 hours as a result of the disaster.

A sixth circumstance occurs where a person is the principal carer of a child and any of the five situations specified referred to above apply to that child.

What constitutes “Act”, “destroyed”, “immediate family member”, “major damage”, “seriously injured”, “utility service” and “principal place of residence” is defined in section 3 of Determination (No. 1).

Subsection 1061L(3) of the Act provides that a determination under section 1061L is a legislative instrument.

This instrument is not subject to disallowance by the Parliament (subsection 1061L(3) of the Act provides that section 42 of the Legislative Instruments Act 2003 does not apply to the determination).

Formal consultation has not been undertaken as Determination (No. 1) was required as a matter of urgency.