

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Coronavirus Economic Response Package Omnibus Act 2020

*Social Security (Coronavirus Economic Response—2020 Measures No. 8)
Determination 2020*

Purpose

The *Social Security (Coronavirus Economic Response—2020 Measures No. 8) Determination 2020* (this Determination) temporarily modifies the *Social Security Act 1991* (the Act) in relation to when a person is regarded as a 'member of a couple' for the purposes of jobseeker payment.

Background

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Omnibus Act) amended the Act to provide additional financial assistance to Australians financially impacted by the Coronavirus. Australians can claim jobseeker payment or youth allowance if they are an Australian resident (or exempt from the residence requirements) and satisfy the requirements outlined in a legislative instrument made under the Act. If qualified, a person receives the current rate of jobseeker payment or youth allowance and, from 27 April 2020, a fortnightly supplement of \$550 or such other amount as determined by the Minister by legislative instrument under the Social Security Act.

The supplement is also payable from 27 April 2020 to existing recipients of jobseeker payment, youth allowance, parenting payment, special benefit, austudy and farm household allowance and to recipients of other social security payments determined by the Minister for Families and Social Services, by legislative instrument. The Minister may extend the period the supplement is payable by legislative instrument.

Recipients of jobseeker payment, youth allowance, austudy and parenting payment are also exempt from the assets test, liquid assets test waiting period, ordinary waiting period, newly arrived resident's waiting period and seasonal work preclusion period for a period of time commencing on 25 March 2020. The exemption from the newly arrived resident's waiting period also applies to special benefit.

Services Australia has received, and continues to receive, large volumes of claims for jobseeker payment. The temporary modification of the definition of 'member of a couple' for the purposes of jobseeker payment made by this Determination will simplify aspects of the claims process and therefore enable claimants to receive payments more quickly.

Item 40A of Schedule 11 to the Omnibus Act allows the Minister to make a determination modifying the operation of the social security law relating to qualification for, or the rate of, a social security payment. The Minister must be

satisfied that the determination is in response to circumstances relating to the Coronavirus known as COVID-19.

This Determination is made in response to circumstances relating to the Coronavirus known as COVID-19. This Determination is a legislative instrument subject to disallowance.

In accordance with Item 40A(5) of Schedule 11 of the Omnibus Act, this Determination has no operation after 31 December 2020.

Commencement

This Determination commences on the day after it is registered.

Consultation

Due to the need to take urgent action to provide additional social security support to Australians affected by the unforeseen Coronavirus pandemic, no specific consultation was undertaken on this Determination.

Regulation Impact Statement (RIS)

An exemption from the Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events (OBPR ID 26371).

Explanation of the provisions

Section 1

Section 1 provides how this Determination is to be cited, that is, as the *Social Security (Coronavirus Economic Response – 2020 Measures No. 8) Determination 2020*.

Section 2

Section 2 provides that this Determination commences on the day after it is registered.

Section 3

Section 3 identifies the provision of the Omnibus Act under which the Minister has authority to make this Determination, which is item 40A of Schedule 11 to the Omnibus Act.

Section 4

Section 4 provides that each modification of the operation of a provision of a social security law as set out in a Schedule to this Determination is determined for the purposes of item 40A of Schedule 11 to the Omnibus Act.

Schedule 1 – Modifications of the Social Security Act 1991

Item 1

Item 1 varies Part 2.12 of the Act by adding section 660N, which inserts a new, streamlined **member of a couple** definition for the purposes of qualification and payability of jobseeker payment during the period covered by subsection 646(2) of the Act (the coronavirus period). This period is 6 months from the date of commencement of Schedule 11 of the Omnibus Act (25 March 2020) but the period may be extended by the Minister by legislative instrument.

The streamlined definition in **subsection 660N(1)** will apply to a person who makes a claim for jobseeker payment on or after commencement of this Determination, as well as to a person who made a claim for jobseeker payment on or after 25 March 2020 where the claim has not been determined by the Secretary before commencement of this Determination.

The streamlined definition applies for the coronavirus period.

New paragraphs 660N(1)(c) to 660N(1)(e) set out the conditions a person will need to be considered a 'member of a couple' for the purposes of jobseeker payment. The conditions are that:

- (a) the person is legally married to another person and is not living separately and apart from the other person on a permanent or indefinite basis; or
- (b) the person is in a relationship with another person (of the same sex or a different sex) registered under a law of a State or Territory that is prescribed for the purposes of section 2E (registered relationships) of the *Acts Interpretation Act 1901* and is not living separately and apart from the other person on a permanent or indefinite basis; or
- (c) the person is in a relationship with another person (of the same sex or a different sex) that is a de facto relationship, not a legal marriage.

The reference to a 'de facto relationship' in paragraph 660N(1)(e) takes its ordinary meaning, being a relationship between two adults who are not legally married but live together on a genuine domestic basis as a couple. The expression 'de facto relationship' in paragraph 660N(1)(e) is not intended to cover relationships between members of a family.

While the streamlined definition will, in practice, operate in a similar way to the definition of 'member of a couple' in section 4 of the Act, the streamlined definition will simplify aspects of the assessment of claims for the jobseeker payment.

Subsection 660N(2) specifies how the streamlined definition in subsection 660N(1) applies. Where the streamlined definition applies to a person, the conditions and matters in subsections 4(2), (3) and (3A) of the Act (the existing member of a couple definition) do not apply. However, existing subsections 4(6) and (6A) and section 24 of the Act will apply.

Section 24 confers a discretion on the Secretary, for a special reason in a particular case, to determine that a person who would otherwise be regarded as a member of

a couple under the streamlined definition, should be treated as not being a member of a couple for the purposes of the Act. Section 24 can apply in cases where a person is legally married, in a registered relationship or in a de facto relationship. This discretion ensures that a person will not be regarded as a member of a couple for social security law purposes if special circumstances exist to make this characterisation inappropriate.

Item 2

Item 2 varies section 1068 of the Act by adding subsection 1068(2A), which inserts a new **member of a couple** definition for the purposes of calculating a person's rate of jobseeker payment during the coronavirus period.

The streamlined definition in **subsection 1068(2A)** will apply to a person who makes a claim for jobseeker payment on or after commencement of this Determination, as well as to a person who made a claim for jobseeker payment on or after 25 March 2020 where the claim has not been determined by the Secretary before commencement of this Determination.

The streamlined definition applies for the coronavirus period.

New paragraphs 1068(2A)(c) to 1068(2A)(e) set out the conditions a person will need to be considered a 'member of a couple' for the purposes of jobseeker payment. The conditions are that:

- (a) the person is legally married to another person and is not living separately and apart from the other person on a permanent or indefinite basis; or
- (b) the person is in a relationship with another person (of the same sex or a different sex) registered under a law of a State or Territory that is prescribed for the purposes of section 2E (registered relationships) of the *Acts Interpretation Act 1901* and is not living separately and apart from the other person on a permanent or indefinite basis; or
- (c) the person is in a relationship with another person (of the same sex or a different sex) that is a de facto relationship, not a legal marriage.

The reference to a 'de facto relationship' in paragraph 1068(2A)(e) takes its ordinary meaning, being a relationship between two adults who are not legally married but live together on a genuine domestic basis as a couple. The expression 'de facto relationship' in paragraph 1068(2A)(e) is not intended to cover relationships between members of a family.

While the streamlined definition will, in practice, operate in a similar way to the definition of 'member of a couple' in section 4 of the Act, the streamlined definition will simplify aspects of the assessment of claims for the jobseeker payment.

Subsection 1068(2B) specifies how the streamlined definition in subsection 1068(2A) applies. Where the streamlined definition applies to a person, the conditions and matters in subsections 4(2), (3) and (3A) of the Act (the existing member of a couple definition) do not apply. However, existing subsections 4(6) and (6A) and section 24 of the Act will apply.

Section 24 confers a discretion on the Secretary, for a special reason in a particular case, to determine that a person who would otherwise be regarded as a member of a couple under the streamlined definition, should be treated as not being a member of a couple for the purposes of the Act. Section 24 can apply in cases where a person is legally married, in a registered relationship or in a de facto relationship. This discretion ensures that a person will not be regarded as a member of a couple for social security law purposes if special circumstances exist to make this characterisation inappropriate.

Statement of Compatibility with Human Rights

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

Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020

This Determination 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 purpose of the *Social Security (Coronavirus Economic Response—2020 Measures No. 8) Determination 2020* (this Determination) is to temporarily modify the *Social Security Act 1991* (the Act) in relation to when a person is regarded as a 'member of a couple' for the purposes of jobseeker payment.

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Omnibus Act) amended the Act to provide additional financial assistance to Australians financially impacted by the Coronavirus. Australians can claim jobseeker payment or youth allowance if they are an Australian resident (or exempt from the residence requirements) and satisfy the requirements outlined in a legislative instrument made under the Act. If qualified, a person receives the current rate of jobseeker payment or youth allowance and, from 27 April 2020, a fortnightly supplement of \$550 or such other amount as determined by the Minister by legislative instrument under the Social Security Act.

The supplement is also payable from 27 April 2020 to existing recipients of jobseeker payment, youth allowance, parenting payment, special benefit, austudy, farm household allowance and other social security payments determined by the Minister for Families and Social Services, by legislative instrument. The Minister may extend the period the supplement is payable by legislative instrument.

Recipients of jobseeker payment, youth allowance, austudy and parenting payment are also exempt from the assets test, liquid assets test waiting period, ordinary waiting period, newly arrived resident's waiting period and seasonal work preclusion period for a period of time commencing on 25 March 2020. The exemption from the newly arrived resident's waiting period also applies to special benefit.

Item 40A of Schedule 11 to the Omnibus Act allows the Minister to make a determination modifying the operation of the social security law relating to qualification for, or the rate of, a social security payment. The Minister must be satisfied that the determination is in response to circumstances relating to the Coronavirus known as COVID-19. Such a determination is a legislative instrument subject to disallowance.

Services Australia has received, and continues to receive, large volumes of claims for jobseeker payment. The temporary modification of the definition of ‘member of a couple’ made for the purposes of jobseeker payment by this Determination will simplify the claims process and therefore enable claimants to receive payments more quickly.

The temporary modification of social security law in relation to jobseeker payment made by this Determination is not intended to significantly change the characterisation of jobseeker payment recipients as being a ‘member of a couple’ or as not being a member of a couple. This characterisation is relevant to the rate of payment, which is lower for members of a couple.

In accordance with Item 40A(5) of Schedule 11 of the Omnibus Act, this Determination has no operation after 31 December 2020.

Human rights implications

This Determination engages the following human rights:

- the right of everyone to social security in article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the rights of the child in article 26 of the Convention on the Rights of the Child (CRC).

Articles 9 and 11 of the ICESCR are promoted by providing payments to assist in achieving an adequate standard of living. This is achieved by enabling claims for jobseeker payment to be processed more efficiently. The pursuit of this objective also promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

This Determination promotes article 26 of the CRC by enhancing the rights of the child to social security. Jobseeker payment is targeted at vulnerable groups and has a flow on effect to the children of recipients by increasing the support for families.

The streamlined definition of ‘member of a couple’ that is introduced for a temporary period by this Determination will operate in a similar manner to section 4 of the Act in practice. The streamlined definition recognises a broad range of relationships (including marriage and de facto arrangements between people of the same sex and people of different sexes).

Importantly, Section 24 of the Act confers a discretion on the Secretary, for a special reason in a particular case, to determine that a person who would otherwise be regarded as a member of a couple under the streamlined definition, should be treated as not being a member of a couple for the purposes of the Act. Section 24 can apply in cases where a person is legally married, in a registered relationship or in a de facto relationship. This discretion ensures that a person will not be regarded as a member of a couple for social security law purposes if special circumstances exist to make this characterisation inappropriate.

The streamlined definition introduced by this Determination will simplify aspects of the claim process for jobseeker payments, which will ensure that claimants can receive payments more quickly. This is consistent with the human rights mentioned above.

Conclusion

This Determination is compatible with human rights because it promotes the protection of human rights for vulnerable groups in society.

Anne Ruston, Minister for Families and Social Services