

## **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. 10)  
Determination 2020*

### **Background**

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Act) amended the *Social Security Act 1991* (the Social Security Act) to provide additional financial assistance to Australians financially impacted by the Coronavirus known as COVID-19.

Item 40A of Schedule 11 to the Act also allows the Minister for Families and Social Services 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.

The *Social Security (Coronavirus Economic Response – 2020 Measures No. 10) Determination 2020* (this Determination) is made in response to circumstances relating to the Coronavirus known as COVID-19.

This Determination has no operation after 31 December 2020.

### **Purpose**

The purpose of this Determination is to implement several measures to prevent detriment to recipients of social security payments resulting from the impacts of COVID-19.

#### **Carer payment and carer allowance**

This Determination temporarily modifies the qualification rules for carer allowance and carer payment in the Social Security Act to provide recipients of these payments an additional three months in which to obtain an assessment, rating and score under the Adult Disability Assessment Tool (ADAT) for a care receiver (for carer payment) or disabled child (for carer allowance) who has turned 16 years of age.

This will give recipients of carer payment and carer allowance additional time to make medical appointments and obtain a rating without losing payment qualification. Due to difficulties experienced in obtaining medical appointments because of the COVID-19 pandemic, this Determination will temporarily extend the current three month period for obtaining an assessment, rating and ADAT by an additional three months, giving affected recipients a total of six months after the care receiver or disabled child turns 16 years of age to obtain an ADAT score. This modification will

only apply if the current three month period for obtaining an assessment, rating and ADAT score ends:

- (a) on or after the day on which this Determination commences; and
- (b) on or before 24 September 2020.

#### Former recipients of wife pension

This Determination modifies the method statement in subsection 654(3) of the Social Security Act to make clear that in addition to applying to the rate of jobseeker payment worked out at step 1 of the method statement 'in accordance sections 643, 644AAA and 646', the COVID-19 supplement under section 646 also applies to the rate worked out at step 2. This change makes clear that the COVID-19 supplement applies to a former recipient of wife pension whether their rate of jobseeker payment is the rate at step 1 or step 2.

#### Mobility allowance

This Determination modifies the Social Security Act to extend the continuation period allowed for mobility allowance recipients who are unable to satisfy the qualification requirements for mobility allowance due to the COVID-19 pandemic. The extension will apply to people who qualify for either mobility allowance rate under subsections 1044(1) or 1044(1A) of the Social Security Act.

Currently, where a mobility allowance recipient is unable to undertake, or has reduced hours of, gainful employment, vocational training, voluntary work, or a combination of these, a recipient would continue to be qualified for the allowance for an additional 12 weeks after the day on which they would otherwise have lost qualification for the allowance. A 12 week extension is also available to certain mobility allowance recipients who cease to receive Jobseeker, Youth Allowance or Austudy or who stop undertaking job search activities or cease participation in vocational rehabilitation programs outlined in section 1046 of the Social Security Act.

This Determination will extend the 12 week period for a further six weeks resulting in an up to 18 week period in which a person can continue to receive mobility allowance. If this extended six week period would result in the person remaining qualified for mobility allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. The 6 week extension will be available if the Secretary is satisfied that an extension is required because of the impact of the coronavirus known as COVID-19.

Currently, where a mobility allowance recipient is unable to satisfy the travel requirements, a recipient would continue to be qualified for mobility allowance for an additional two weeks after the day on which they would otherwise have lost qualification for the allowance. This Determination will extend the two week period for a further 16 weeks resulting in an up to 18 week period in which a person can continue to receive mobility allowance. If this extended 16 week period would result in the person remaining qualified for mobility allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. The 16 week extension will be available if the Secretary is satisfied that an extension is required because of the impact of the coronavirus known as COVID-19.

This modification ensures that the impacts of COVID-19 are minimised for people with a disability, and also ensures that those recipients who may still need to do some travel for work continue to be supported.

### Pension portability

This Determination modifies the Social Security Act to address the impact of travel restrictions or other COVID-19 related circumstances on people who are recipients of age pension or disability pension (for severely disabled persons) and who are unable to return to, or depart from, Australia within 26 weeks.

Currently, after this 26 week period, a reduction in rate may ordinarily apply to pensioners who remain overseas as a result of supplements, such as rent assistance, ceasing to be portable and/or receipt of a proportional rate of pension based on their Australian working life residence. Pensioners with beneficial portability arrangements under particular savings provisions who remain in Australia after the 26 week period will cease to be covered by applicable savings provisions, which may result in less beneficial treatment once they do return overseas again.

The Determination will allow the Secretary to determine an alternative period to 26 weeks for:

- pensioners absent from Australia to whom sections 1216 (amounts added to rate) and/or 1220A (proportionality – age pension) or 1220(B) (proportionality – disability support pension rate for a severely disabled person) apply; and
- pensioners in Australia to whom paragraphs 6(3)(d) or (4)(d) or 14(3)(d) or (4)(d) of Schedule 4 to the *Social Services and Other Legislation Amendment Act 2014* (the Amendment Act) apply and/or item 128 of Schedule 1A to the Social Security Act applies.

The circumstances in which a determination may be made are that:

- (a) the 26 week period applicable to the person ends on or after 11 March 2020;
- (b) the Secretary is satisfied that the person is temporarily absent from Australia, or has returned temporarily to Australia (as applicable); and
- (c) the Secretary is satisfied the reason the person is unable to return before the end of 26 weeks is the impact of the Coronavirus known as COVID -19.

The Secretary's power to determine an alternative period is limited by the requirement to ensure that any period determined does not end after 24 September 2020.

The Determination is intended to provide assistance specifically to those pensioners who would have returned to or departed Australia within a period of 26 weeks if not for the impact of COVID-19.

The requirement that any alternative period determined by the Secretary must not end after 24 September 2020 recognises the changing travel environment and likelihood that restrictions will gradually ease.

The ability to make a determination applies in respect of a person whose 26 week period ends on or after 11 March 2020. This takes into account the World Health Organisation characterisation of COVID-19 as a pandemic on this date and the subsequent effect on individuals' ability to return to, or depart, Australia as a result of illness, restrictions on travel or other related circumstances.

The Determination means that pensioners temporarily overseas who reach the current 26 week time limit can have their existing rate maintained and those whose rate has already been reduced can be restored to the rate received prior to the 26 week time limit, as regards the application of relevant supplements and calculation of their rate of pension. Any arrears payable as a result of a favourable determination will not be limited by existing date of effect provisions in Subdivision B of Division 9 of Part 3 of the *Social Security (Administration) Act 1999* (the Administration Act).

The Determination also means that pensioners to whom the relevant savings provisions apply can continue to be covered by those provisions if they reach the 26 week time limit or have the application of the provisions restored if the 26 week period has already elapsed.

The benefit of a longer period than 26 weeks to return to, or depart, Australia (as applicable) is not intended to be extended to a person once they are able to travel. Pensioners with unlimited portability of their payment who decide to remain overseas despite being able to return to Australia or to remain in Australia despite being able to depart, will be subject to the ordinary outcome under the social security law, resulting in a reduction in payment rate or loss of application of relevant savings provisions.

## **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 COVID-19 pandemic, no specific consultation was undertaken on this instrument. All modifications to the social security law made by this Determination have a beneficial effect on recipients of social security payments.

The measures respond to circumstances arising from the impact of COVID-19 that, if not for this Determination, would have negative qualification and/or payment consequences for recipients of carer payment and allowance, mobility allowance, age pension and disability support pension (for severely disabled persons).

## **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. 10) Determination 2020*.

### **Section 2**

Section 2 provides that this Determination commences on the day after the instrument is registered on the Federal Register of Legislation.

### **Section 3**

Section 3 provides that this Determination is made under item 40A of Schedule 11 to the *Coronavirus Economic Response Package Omnibus Act 2020*.

### **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 Act.

## **Schedule 1 – Modifications of the Social Security Act 1991**

### **Item 1 – Variation of section 1046**

**Item 1** modifies section 197K of the Social Security Act. Section 197K provides for an extended period of qualification for certain carer payment recipients.

Subsection 197K(1) provides that an extended period of qualification for carer payment will be available under section 197K where a care provider is:

- qualified for carer payment for a care receiver that is under 16 years of age;
- is qualified for carer payment in respect of that care receiver under one the following provisions of the Social Security Act:
  - section 197B (child with a severe disability or severe medical condition);
  - section 197C (2 or more children each with a disability or medical);
  - section 197D (disabled adult and one or more children each with a disability or medical condition); or
  - paragraph 198(2)(d) (a disabled adult and a dependent child of the adult);
- the care receiver turns 16 years of age; and
- the care receiver has not been assessed and rated and given a score under the Adult Disability Assessment Tool (ADAT).

Subsection 197K(2) of the Social Security Act then sets out that if, apart from the care receiver turning 16 years of age, the care provider would remain qualified for a carer payment under one of the four carer payment qualification provisions mentioned above, the care provider remains qualified under that provision for three months after the care receiver turns 16 years of age.

Item 1 temporarily modifies section 197K of the Social Security Act by inserting a new subsection 197K(3) at the end of the section which provides that if the three month period referred to in current subsection 197K(2) ends:

- on or after the day on which this Determination commences and
- on or before 24 September 2020,

then the reference in that subsection to three months is taken to be a reference to six months.

The effect of this temporary modification is to give care providers qualified for carer payment on the day the care receiver turns 16 years of age an additional three months to obtain an assessment, rating and ADAT score if the current three month period, provided for in subsection 197K(2), ends during the period that:

- starts on the day this Determination commences; and
- ends on 24 September 2020.

This would, for example, mean that if the three month period after a care receiver turns 16 years of age ends on 24 September 2020 and an ADAT score has not been obtained by that date, the care provider would be entitled to an additional three months in which to obtain an ADAT score for the care receiver. If the three month period after a care receiver turns 16 years of age ends on 25 September 2020 and an ADAT score is not obtained by 24 September 2020, section 197K would no longer apply and the care provider would lose qualification for carer payment for that care receiver from 25 September 2020.

Item 1 also temporarily modifies the heading of section 197K to replace the reference to '3 months' in that heading with a reference to '6 months'.

#### Item 2 – Variation of section 654

**Item 2** adds reference to the COVID-19 supplement under section 646 of the Social Security Act to step 2 of the method statement in subsection 654(3) (the method statement), which sets out the method for working out the jobseeker payment rate for former recipient of wife pension.

This addition is to make clear that the COVID-19 supplement applies to the rate worked out at step 1 of the method statement 'in accordance sections 643, 644AAA and 646', and to the rate worked out at step 2. Step 3 or 4 of the method statement then applies to determine whether the woman's jobseeker payment rate under section 654 is the rate at step 1 or step 2. The COVID-19 supplement is not added to the rate of payment following step 3 or 4.

### Item 3 – Variation of section 953A

**Item 3** temporarily modifies section 953A of the Social Security Act. Section 953A provides for an extended period of qualification for certain carer allowance recipients. Subsection 953A(1) relates to care providers that are qualified for carer allowance for one disabled child under subsection 953(1) of the Social Security Act. Subsection 953A(2) relates to care providers that are qualified for carer allowance for two disabled children under subsection 953(2) of the Social Security Act.

Paragraphs 953A(1)(a) to (c) of the Social Security Act provide that an extended period of qualification for carer allowance recipients will be available under section 953A where a care provider is:

- qualified for carer allowance under subsection 953(1) of the Social Security Act for a disabled child;
- the disabled child turns 16 years of age; and
- the disabled child has not been assessed and rated and given a score under the ADAT.

Paragraphs 953A(1)(d) and (e) then set out how long the care provider can remain qualified for carer allowance under subsection 953(1). These paragraphs provide the care receiver remains qualified for carer allowance for that child until:

- if the child is assessed and rated and given a score under the ADAT before the end of the period of three months beginning on the day the child turned 16 - the end of the day before the day the child is given that score; or
- otherwise - the end of the period of three months beginning on the day the child turned 16 years of age.

Item 3 temporarily modifies 953A of the Social Security Act by inserting a new subsection 953A(1A) after subsection 953A(1). New subsection 953A(1A) provides that if the three month period referred to in current subsection 953A(1) ends on or after the day on which this Determination commences and on or before 24 September 2020, then the reference in that subsection to three months is taken to be a reference to six months. The effect of this temporary modification is to give care providers an additional three months to obtain an assessment, rating and ADAT score for a disabled child if the current three month period provided for in subsection 953A(1) ends during the period that:

- starts on the day this Determination commences; and
- ends on 24 September 2020.

This would, for example, mean that if the three month period after a disabled child turns 16 years of age ends on 24 September 2020 and an ADAT score has not been obtained by that date, the care provider would be entitled to an additional three months in which to obtain an ADAT score for the child. If the three month period after a disabled child turns 16 years of age ends on 25 September 2020 and an ADAT score is not obtained by 24 September 2020, section 953A would no longer apply and the care provider would lose qualification for carer allowance for that disabled child from 25 September 2020.

Item 3 also temporarily modifies 953A of the Social Security Act to insert a new subsection 953A(2A) after subsection 953A(2). Subsection 953A(2) essentially provides that if the only thing preventing a care provider from remaining qualified for carer allowance in respect of two disabled children under subsection 953(2) of the Social Security Act is the fact that either or both of the children has turned 16 years of age on a day, a care provider will have up to three months from that day to obtain an assessment, rating and score for the child or children under the ADAT.

The effect of new subsection 953A(2A) is to give care providers in these circumstances a further three months to obtain the required assessment, rating and ADAT score, giving care providers a total of six months. As with new subsection 953A(1A) discussed above, this additional three month period for obtaining an assessment, rating and ADAT score will only be available if the current three month extension period ends during the period that:

- starts on the day this Determination commences; and
- ends on 24 September 2020.

Item 3 also temporarily modifies the heading of section 953A to replace the reference to '3 months' in that heading with a reference to '6 months'.

#### Item 4 –Variation of section 1046

**Item 4** temporarily modifies section 1046 of the Social Security Act, which provides for a continued period of qualification for mobility allowance in certain circumstances. The modifications made by this item relate to the operation of subsections 1046(3) and (4) of the Social Security Act.

Subsection 1046(3) provides that a mobility allowance recipient to whom section 1046 applies (see subsections 1046(1), (2), (2A) and (2B)) continues to be qualified for mobility allowance for 12 weeks after the person would, apart from section 1046, have ceased to be qualified for the mobility allowance.

Subsection 1046(4) provides that if:

- a mobility allowance is payable to a person; and
- the person would, apart from section 1046, cease to be qualified for the allowance because of circumstances other than those described in subsections 1046(1), (2), (2A) and (2B) of the Social Security Act;

the person continues to be qualified for the mobility allowance for two weeks after the person would, apart from section 1046, have ceased to be qualified for the mobility allowance.

Subitem 4(1) varies section 1046 of the Social Security Act by inserting a new subsection 1046(3A) to provide that if:

- the 12 week period mentioned in subsection 1046(3) ends on a day during the period beginning the day new subsection 1036(3A) commences and ending 24 September 2020; and
- the Secretary is satisfied that section 1046 applies to the person because of the impact of the Coronavirus known as COVID-19; and
- subsection 1046(5) has not applied to the person;



the Secretary may determine that, despite subsection 1046(3), the person continues to be qualified for mobility allowance until the end of the earlier of:

- the last day of the 6 week period which begins on the day after the end of the 12 week period mentioned in subsection 1046(3); or
- 24 September 2020.

Subsection 1046(5) provides that where the 12 week extension period in subsection 1046(3) applies to continue a person's qualification, and a circumstances occurs that would result in the person ceasing to be qualified, mobility allowance will cease on the day the circumstances occur.

#### Example 1

On the day that new subsection 1046(3A) commences, a person is six weeks into a 12 week continuation period as the person has had her hours of work reduced due to COVID-19 and is no longer able to satisfy the 32 hours in every 4 weeks work test. As a result of new subsection 1046(3A), the person's continuation period will run for a further 12 weeks.

#### Example 2

On 1 September 2020, a person is 11 weeks into a 12 week continuation period as the person has had her hours of work reduced due to COVID-19 and is no longer able to satisfy the 32 hours in every 4 weeks work test. As a result of new subsection 1046(3A) the person's continuation period will end on 24 September 2020 and that day will be the last day the person can qualify for mobility allowance under section 1046 of the Social Security Act.

Subitem 4(2) also varies section 1046 of the Social Security Act by inserting a new subsection 1046(4A) to provide that if

- the two week period mentioned in subsection 1046(4) ends on a day during the period beginning the day new subsection 1036(4A) commences and ending 24 September 2020 and
- the Secretary is satisfied that subsection 1046(4) applies to the person because of the impact of the Coronavirus known as COVID-19;

the Secretary may determine that, despite subsection 1046(4), the person continues to be qualified for the mobility allowance until the end of the earlier of the following days:

- the last day of the 16 week period beginning on the day after the end of the two week period mentioned in subsection 1046(4); or
- 24 September 2020.

Subitem 4(3) also varies subsection 1046(5) of the Social Security Act to make a consequential amendment to that subsection resulting from the insertion of new subsection 1046(3A) by subitem 4(1) (discussed above).

#### Item 5 - Variation of section 1216

**Item 5** amends section 1216 of the Social Security Act to provide a mechanism so that pensioners whose portability period is unlimited, and who have rent assistance,

incentive allowance or pharmaceutical allowance added to the rate of their payment, do not lose these additions if unable to return to Australia within 26 weeks due to the impact of COVID-19.

Subitem 5(1) is a technical amendment to add paragraph number (1) to the existing provision set out in section 1216.

Subitem 5(2) inserts a new paragraph (2), which permits the Secretary to determine that an alternative period to 26 weeks applies to a person for the purposes of paragraph 1216(1)(a), which prescribes the 26 week period after which the additional amounts set out in subsection 1216(1) will ordinarily not be added to a person's rate of payment.

This provision enables the Secretary to determine an alternative period, which may be longer than 26 weeks, if the circumstances in paragraphs 1216(2)(a) to (c) are satisfied. These circumstances are that:

- (a) the 26 week period applicable to the person ends on or after 11 March 2020;
- (b) the Secretary is satisfied that the person is temporarily absent; and
- (c) the Secretary is satisfied the reason the person is unable to return before the end of 26 weeks is the impact of the Coronavirus known as COVID -19.

The Secretary's power to determine an alternative period is limited by the requirement to ensure that any period determined does not end after 24 September 2020.

Together with new subsection 1216(3), this means that pensioners whose rates have already been reduced as a result of their inability to return to Australia can be restored to the position they would have been (as regards the effect of not returning to Australia within 26 weeks) had their ability to travel not been impacted by COVID-19, and a suitable timeframe allowed for return travel.

The effect of subsection 1216(3) is that where such a favourable decision is made, the date of effect of the determination is not limited by provisions contained in Subdivision B of Division 9 of Part 3 of the Administration Act.

#### Items 6 and 7 – Variation of sections 1220A and 1220B

**Items 6 and 7** amend sections 1220A and 1220B of the Social Security Act respectively, to provide a mechanism to grant recipients of age pension and disability pension for severely disabled persons, who are unable to return to Australia within 26 weeks due to the impact of COVID-19, an alternative period of absence before a potentially reduced rate of payment applies under section 1221 of the Social Security Act.

New subsections 1220A(6) and 1220B(3) enable the Secretary to determine an alternative period, which may be longer than 26 weeks, if the circumstances in paragraphs (a) to (c) are satisfied. These circumstances are that:

- (a) the 26 week period applicable to the person ends on or after 11 March 2020;
- (b) the Secretary is satisfied that the person is temporarily absent; and

- (c) the Secretary is satisfied the reason the person is unable to return before the end of 26 weeks is the impact of the Coronavirus known as COVID -19.

The Secretary's power to determine an alternative period is limited by the requirement to ensure that any period determined does not end after 24 September 2020.

Together with new subsections 1220A(7) and 1220B(4), this means that pensioners whose rates have already been reduced as a result of their inability to return to Australia can be restored to the position they would have been (as regards the effect of not returning to Australia within 26 weeks) had their ability to travel not been impacted by COVID-19, and a suitable timeframe allowed for return travel.

The effect of subsections 1220A(7) and 1220B(4) is that where such a favourable determination is made, the date of effect of the determination is not limited by provisions contained in Subdivision B of Division 9 of Part 3 of the Administration Act.

#### Item 8 – Variation of Part 4.2

**Item 8** adds new Division 4 (other portability rules), containing new section 1221A, at the end of Part 4.2 of the Social Security Act. This section gives the Secretary the ability to determine an alternative period to 26 weeks, in equivalent terms to items 6 and 7 of this Determination, in relation to pensioners who do not reside in Australia but are temporarily in Australia and are a person to whom paragraph 6(3)(d) or (4)(d) or 14(3)(d) or (4)(d) of Schedule 4 to the Amendment Act applies.

Those people to whom one of these provisions of the Amendment Act applies were living overseas immediately before changes to Australian working life residency requirements for people with unlimited portability of their pension were introduced, from 1 January 2014. The requirements that applied prior to 1 January 2014 (25 years residency rather than 35 years) continue to apply to these people unless they return to Australia for longer than 26 weeks and leave again.

#### Item 9 – Variation of clause 128 of Schedule 1A

Item 9 of this Determination adds new subclause 128(4) to item 128 of Schedule 1A to the Social Security Act. Similarly to item 8 of this Determination, this modification gives the Secretary the ability to determine an alternative period to 26 weeks, in equivalent terms to items 6 and 7 of this Determination, in relation to pensioners who are temporarily in Australia and to whom item 128 applies.

Those people to whom item 128 applies were overseas immediately prior to 20 September 2000 when changes were made to portability rules, including in relation to the permitted period of absence from Australia before a reduced rate of payment applies. A person to whom item 128 applies is not subject to these changes unless they return to Australia for longer than 26 weeks.

## **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. 10) 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 *Coronavirus Economic Response Package Omnibus Act 2020* (the Act) amended the *Social Security Act 1991* (Social Security Act) to provide additional financial assistance to Australians financially impacted by the Coronavirus.

Item 40A of Schedule 11 to the Act allows the Minister to make a determination modifying the operation of the social security law relating to the 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.

This Determination is made in response to circumstances relating to the Coronavirus known as COVID-19.

#### **Purpose**

The purpose of this Determination is to implement several measures to prevent detriment to recipients of social security payments resulting from the impacts of the Coronavirus known as COVID-19.

#### Carer payment and carer allowance

This Determination temporarily modifies the qualification rules for carer allowance and carer payment in the Social Security Act to provide recipients of these payments an additional three months in which to obtain an assessment, rating and score under the Adult Disability Assessment Tool (ADAT) for a care receiver (for carer payment) or disabled child (for carer allowance) who has turned 16 years of age.

This will give recipients of carer payment and carer allowance additional time to make medical appointments and obtain a rating without losing payment qualification. Due to difficulties experienced in obtaining medical appointments because of the COVID-19 pandemic, this Determination will temporarily extend the current three month period for obtaining an assessment, rating and ADAT by an additional three months, giving affected recipients a total of six months after the care receiver or disabled child turns 16 years of age to obtain an ADAT score. This modification will only apply if the current three month period for obtaining an assessment, rating and ADAT score ends:

- (a) on or after the day on which this Determination commences; and
- (b) on or before 24 September 2020.

### Former recipients of wife pension

The purpose of the amendment made by item 2 of Schedule 1 to the method statement in subsection 654(3) of the Social Security Act is to make clear that in addition to applying to the rate of jobseeker payment worked out at step 1 of the method statement 'in accordance sections 643, 644AAA and 646', the COVID-19 supplement under section 646 applies to the rate worked out at step 2.

### Mobility allowance

This Determination modifies the Social Security Act to extend the continuation period allowed for mobility allowance recipients who are unable to satisfy the qualification requirements for mobility allowance due to the COVID-19 pandemic. The extension will apply to people who qualify for either mobility allowance rate under subsections 1044(1) or 1044(1A) of the Social Security Act.

Currently, where a mobility allowance recipient is unable to undertake, or has reduced hours of, gainful employment, vocational training, voluntary work, or a combination of these, a recipient would continue to be qualified for the allowance for an additional 12 weeks after the day on which they would otherwise have lost qualification for the allowance. A 12 week extension is also available to certain mobility allowance recipients who cease to receive Jobseeker, Youth Allowance or Austudy or who stop undertaking job search activities or cease participation in vocational rehabilitation programs outlined in section 1046 of the Social Security Act.

This Determination will extend the 12 week period for a further six weeks resulting in an up to 18 week period in which a person can continue to receive mobility allowance. If this extended six week period would result in the person remaining qualified for mobility allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. The 6 week extension will be available if the Secretary is satisfied that an extension is required because of the impact of the Coronavirus known as COVID-19.

Currently, where a mobility allowance recipient is unable to satisfy the travel requirements, a recipient would continue to be qualified for mobility allowance for an additional two weeks after the day on which they would otherwise have lost qualification for the allowance. This Determination will extend the two week period for a further 16 weeks resulting in an up to 18 week period in which a person can continue to receive mobility allowance. If this extended 16 week period would result in the person remaining qualified for mobility allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. The 16 week extension will be available if the Secretary is satisfied that an extension is required because of the impact of the Coronavirus known as COVID-19

This modification ensures that the impacts of COVID-19 are minimised for people with a disability, and also ensures that those recipients who may still need to do some travel for work continue to be supported.

## Pension portability

The purpose of items 5 to 9 of Schedule 1 is to address the impact of travel restrictions or other COVID-19 related circumstances on people who are recipients of age pension or disability pension (for severely disabled persons) and who are unable to depart, or return to, Australia within 26 weeks. After this period, a reduction in rate may ordinarily apply or beneficial treatment under certain savings provisions may be lost.

The Determination allows the Secretary to determine an alternative period to 26 weeks if:

- (a) the 26 week period applicable to the person ends on or after 11 March 2020;
- (b) the Secretary is satisfied that the person is temporarily absent from Australia, or has returned temporarily to Australia (as applicable); and
- (c) the Secretary is satisfied the reason the person is unable to return before the end of 26 weeks is the impact of the Coronavirus known as COVID -19.

Any alternative period determined by the Secretary must not end after 24 September 2020.

The Determination is intended to provide assistance specifically to those pensioners who would have returned to or departed Australia within a period of 26 weeks if not for the impact of COVID-19.

The Determination means that pensioners temporarily overseas who reach the 26 week time limit can have their existing rate maintained and those whose rate has already been reduced can be restored to the rate received prior to the 26 week time limit, as regards the relevant supplements and calculation of their rate of pension.

The amendments also mean that pensioners to whom the relevant savings provisions apply can continue to be covered by those provisions if they reach the 26 week time limit or have their coverage restored if the 26 week period has already elapsed.

The benefit of a longer period than 26 weeks to return to, or depart, Australia (as applicable) is not intended to be extended to a person once they are able to travel. Pensioners with unlimited portability of their payment who decide to remain overseas despite being able to return to Australia or to remain in Australia despite being able to depart, will be subject to the ordinary outcome under the social security law, resulting in a reduction in payment rate or loss of coverage under the relevant savings provisions.

## **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).

Articles 9 and 11 of the ICESCR are promoted by ensuring that social security recipients can continue to access social security to assist in achieving an adequate standard of living despite the impact of the Coronavirus known as COVID-19.

This is achieved by ensuring that circumstances relating to COVID-19 do not result in recipients of social security payments experiencing a reduction in their rate of payment.

The pursuit of this objective also promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

### **Conclusion**

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

**Senator the Hon Anne Ruston, Minister for Families and Social Services**