**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. 13) Determination 2020

**Background**

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Omnibus Act) amended the *Social Security Act 1991* (the 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.

This Determination has no operation after 31 December 2020.

**Purpose**

The Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020 (the No. 11 Determination) amended provisions of the Act to extend qualification for income support payments and linked concessions, where a recipient would have otherwise ceased to qualify due to a change in their or their partner’s employment income.

To further extend this support social security recipients on active nil rate periods will have this period further extended until 16 November 2020 to enable a smooth return to JobSeeker or other income support payments (if required).

The Social Security (Coronavirus Economic Response – 2020 Measures No. 13) Determination 2020 (this Determination) amends the No. 11 Determination to implement the extension of the nil rate period. This Determination will ensure that a social security recipient who is currently subject to a nil rate period under subsection 23(4A) of the Act, or who commence a nil rate period before 16 November 2020, will be taken to be receiving a social security payment at a rate of nil until at least
16 November 2020. This will allow the person to retain access to certain benefits such as concession cards for a longer period. The standard 12 week nil rate period will apply after 16 November 2020.

This Determination is being made in response to COVID-19, to ensure that income support recipients can more easily return to income support, if needed, as a result of changes to the JobKeeper Payment.

**Commencement**

This Determination commences on the day after it is registered on the
Federal Register of Legislation.

**Consultation**

The Department of Social Services consulted with Services Australia (the Agency) in developing this Determination. The Agency is responsible for administering social security payments and will implement the changes made by this Determination.

Due to the need to take urgent action to provide additional social security support to Australians affected by COVID-19, no further consultation was undertaken on this Determination.

**Regulation Impact Statement (RIS)**

An exemption from the Regulation Impact Statement requirements was granted by the Prime Minister due to urgent and unforeseen events (OBPR ID: 26371).

**Explanation of the provisions**

Item 1 - Name

Item 1 provides the name of this Determination, the Social Security (Coronavirus Economic Response – 2020 Measures No. 13) Determination 2020.

Item 2 - Commencement

Item 2 sets out the commencement of this Determination as the day after it is registered on the Federal Register of Legislation.

Item 3 - Authority

Item 3 provides that this Determination is made under item 40A of Schedule 11 to the Omnibus Act.

Item 4 – Modifications

Item 4 provides that each modification of the operation of a provision of a social security law (within the meaning of the Social Security Act 1991) as set out in a Schedule to this Determination is determined for the purposes of item 40A of Schedule 11 to the Act. Subsection 33(3) of the Acts Interpretation Act 1901 provides that the power to make a legislative instrument 'shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument'. In making this Determination, which amends the No. 11 Determination, the Minister is relying upon this subsection in conjunction with the instrument-making power in item 40A of Schedule 11 to the Act.

**Schedule 1 – Amendment of the Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020**

Item 1 – Amendment of Schedule 1, subitem 1(3)

Item 1 is a minor, consequential amendment to subitem 1(3) of the No. 11 Determination resulting from the amendment made by item 2 (discussed below).

Item 2 – Amendment of Schedule 1, subitem 1(3)

Item 2 amends subitem 1(3) of the No. 11 Determination to repeal subsections 23(4AB) and 23(4AC) and substitute a new subsection 23(4AB).

This new subsection 23(4AB) ensures that a person, whose 12-week nil rate period under subsection 23(4A) of the Act would otherwise end during the period
22 June 2020 to 15 November 2020, will have their nil rate period extended until
16 November 2020. The substantive effect of this change is to extend the current
2 August 2020 extension to the nil rate period (provided for in the No. 11 Determination) until 16 November 2020.

As a result of new subsection 23(4AB), a person will be taken to be receiving a social security payment until 16 November 2020 for the purposes of receiving the benefits and concessions listed in subsection 23(4AA) of the Act (if the person would otherwise cease to be paid their social security payment due to their or their partner’s employment income).

This has the effect of treating a person as receiving a payment for the purposes of qualifying for a Pensioner Concession Card under subsection 1061ZA(1) of the Act (other qualification requirements for the card still apply) or a Health Care Card under subsection 1061ZK(5) of the Act (other qualification requirements for the card still apply). A person will also be treated as receiving a payment for the purposes of accessing the other benefits listed in subsection 23(4AA) of the Act.

**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. 13) 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**

TheSocial Security (Coronavirus Economic Response – 2020 Measures No. 13) Determination 2020(this Determination) amends the *Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020* (the No. 11 Determination). The No. 11 Determination amended section 23 of the *Social Security Act 1991* totemporarily extend the employment income nil rate period[[1]](#footnote-1). Under the No. 11 Determination, income support recipients will retain eligibility for payment until 2 August 2020 if reduced to a nil rate of support due to income composed entirely or in part of employment income.

This Determination extends this date until 16 November 2020, and will support individuals during the period of ongoing economic uncertainty resulting from COVID‑19 by ensuring they can more easily return to income support, if needed, as a result of temporary changes to their income.

Recipients retain access to concession cards, such as the Pensioner Concession Card or Health Care Card, for the duration of the employment income nil rate period. This Determination will enable income support recipients with employment income above their cut-out point to retain access to their concession cards and will prevent the need for these individuals to subsequently reapply for support, and potentially be required to serve a waiting period(s).

**Human rights implications**

This Determination engages the following human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

* the right to social security in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (ICESCR).

Right to social security

Article 9 of the ICESCR recognises ‘the right of everyone to social security.’ The Committee on Economic, Social and Cultural Rights (CESCR) has described this right as encompassing the right to access and maintain benefits, in cash or in kind, provided in order to ensure protection in respect of social risks and contingencies.[[2]](#footnote-2) The elements of the right are:

* a social security system is available for the provision of benefits
* the social security system provides for coverage of social risks and contingencies
* benefits, whether in cash or kind, are adequate and in amount and duration in order that everyone may realise rights contained in articles 10, 11 and 12 of the ICESCR, and
* benefits are accessible.

This Determination will enhance the right to social security by making it easier for individuals to access benefits, both cash and in-kind, for the period up until
16 November 2020. All individuals currently eligible for an employment income nil rate period will enjoy an extended nil rate period (if reduced to a nil rate of support as a result of employment income) until 16 November 2020. This Determination will:

* allow individuals to retain access to in-kind benefits such as concession cards;
* allow individuals to immediately recommence receiving cash benefits in the event that their employment income falls below their specified cut-out point for an additional nine fortnights; and
* prevent the need for individuals with employment income to reapply for income support following the conclusion of the scheme.

In this way, this Determination enhances the right to social security as described in Article 9 of the ICESCR. This Determination will not otherwise change the availability of social security, the amount or duration of social security, or the social risks and contingencies in respect of which the social security law affords protection.

**Conclusion**

This Determination is compatible with human rights because it enhances an individual’s ability to access and retain social security benefits.

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

1. The ‘employment income nil rate period’ is described in paragraphs 23(4A)(g) and 23(4A)(h) of the *Social Security Act 1991*. [↑](#footnote-ref-1)
2. Committee on Economic, *General Comment No 19: The right to social security (art 9)*, 39th sess, UN Doc E/C.12/GC/19 (4 February 2008), [10]-[27]. [↑](#footnote-ref-2)