

EXPLANATORY STATEMENT

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

Coronavirus Economic Response Package Omnibus Act 2020

Social Security Act 1991

*Social Security (Coronavirus Economic Response – 2020 Measures No. 15)
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 known as COVID-19.

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 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.

The Social Security (Coronavirus Economic Response – 2020 Measures No. 15) Determination 2020 (this Determination) is made in response to circumstances relating to the Coronavirus known as COVID-19.

Determinations made under item 40A of Schedule 11 to the Omnibus Act have no operation after 31 December 2020.

Schedule 11 to the Omnibus Act also amended the Act to provide for the payment of the COVID-19 supplement to recipients of JobSeeker Payment¹, Parenting Payment², Youth Allowance (Other)³ and Sickness Allowance⁴ for an initial period that ended on 24 September 2020.⁵ The period for which the supplement is payable to recipients of JobSeeker Payment, Parenting Payment and Youth Allowance was then extended, by legislative instrument, to 18 December 2020 at a rate of \$250 a fortnight.

¹ See section 646 of the Act.

² See section 504 of the Act.

³ See section 557 of the Act. Youth Allowance (Other) refers to a recipient of Youth Allowance that is not undertaking full-time study and is not a new apprentice. Payment of the COVID-19 supplement was extended to all recipients of Youth Allowance by the *Social Security (Coronavirus Economic Response—2020 Measures No. 1) Determination 2020*.

⁴ See former section 710 of the Act. Sickness Allowance closed to all new entrants on 20 March 2020 and ceased entirely on 20 September 2020 (see Schedule 5 to the *Social Services Legislation Amendment (Welfare Reform) Act 2018*). Section 710 was repealed from the Act.

⁵ For recipients of payments other than Sickness Allowance (as this payment was no longer payable from 20 September 2020).

Schedule 11 to the Omnibus Act also amended the Act to insert new section 1210B. This section provides that the Minister may make a legislative instrument determining other social security payment recipients that can be paid the COVID-19 supplement and the rate of payment and period in respect of which it can be paid. The Minister made legislative instruments determining Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance as payments in respect of which the supplement can be paid. The period for which the supplement is payable to recipients of these payments had also been extended, by legislative instrument, to 18 December 2020 at a rate of \$250 a fortnight.

Purpose

Extension of the COVID-19 supplement period through to 31 December 2020

This Determination ensures the continued payment of the COVID-19 supplement through to the end of 2020 for recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance. The supplement will continue to be paid to recipients of these payments at a rate of \$250 a fortnight for social security instalment periods that begin on a day during the period 19 December 2020 to 31 December 2020 (inclusive).

Extension of the nil rate period

This Determination also amends the *Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020* (the No. 11 Determination).

The No. 11 Determination currently modifies section 23 of the Act so that a person continues to be treated as 'receiving' a social security pension or benefit until 16 November 2020 where the person's standard 12-week employment income nil rate period (under paragraph 23(4A)(h) of the Act) ends during the period 22 June 2020 to 16 November 2020.

An employment income nil rate period under section 23 of the Act ensures that a social security pension or benefit recipient can continue to access certain ancillary benefits (such as concession cards) they would ordinarily lose access to because their rate of pension or benefit is nil.

A 12-week employment income nil rate period under paragraph 23(4A)(h) of the Act begins after the end of the social security instalment period in which a person's rate of a social security pension or benefit is reduced to nil due to employment income (whether this is the recipient's employment income or their partner's). Ordinarily, a person would only have a 12-week employment income nil rate period. After the 12-week period has ended, they would then lose access to the ancillary benefits that result from an employment income nil rate period.

The No. 11 Determination temporarily amended subsections 23(4A) and 23(4AA) of the Act and inserted a temporary subsection 23(4AB). The effect of these temporary modifications to the social security law was to ensure that recipients could have an extended employment income nil rate period that would allow them to retain access to their ancillary benefits for longer than the standard 12 weeks provided for in the Act. The amendments extended the employment income nil rate period through to 16 November 2020 for social security benefit and pension recipients whose standard 12-week period ended between 22 June 2020 and 16 November 2020. The amendments made by this Determination extend the end date of the employment income nil rate period to 31 December 2020.

Therefore, if a person's standard 12-week employment income nil rate period ends on a day during the period 22 June 2020 to 31 December 2020, the end date of their employment income nil rate period will be 31 December 2020.

The amendments made by this Determination will ensure that increased partner income from JobKeeper does not result in the loss of social security benefits such as a concession cards.

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 the amendments in Schedule 1 to this Determination, the Minister is relying upon this subsection in conjunction with the instrument-making powers in item 40A of Schedule 11 to the Omnibus Act and section 1210B of the Act.

This Determination is a legislative instrument subject to disallowance.

Commencement

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

Consultation

Due to the beneficial and temporary nature of the changes made by this Determination, and the fact it extends existing temporary arrangements, no 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

Part 1 – Preliminary

Section 1 - Name

Section 1 provides the name of this Determination, the *Social Security (Coronavirus Economic Response – 2020 Measures No. 15) Determination 2020*.

Section 2 - Commencement

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

Section 3 – Authority

Section 3 provides that this Determination is made under sections 504, 557, 646 and 1210B of the Act and item 40A of Schedule 11 to the Omnibus Act.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a schedule to this Determination is amended or repealed as set out in the applicable items in the schedule concerned, and any other item in a schedule to this Determination has effect according to its terms.

Part 2 - COVID 19 supplement

Sections 5 to 7 – COVID-19 supplement – Parenting Payment, Youth Allowance and JobSeeker Payment

Sections 5 to 7 ensure the COVID-19 supplement will continue to be paid to recipients of JobSeeker Payment, Parenting Payment and Youth Allowance at a rate of \$250 a fortnight for social security instalment periods that begin on a day during the period 19 December 2020 to 31 December 2020 (inclusive).

The *Social Security (Coronavirus Economic Response – 2020 Measures No. 14) Determination 2020* currently provides for the payment of the COVID-19 supplement to recipients of these payments for the period 25 September 2020 to 18 December 2020 (inclusive) at a rate of \$250 a fortnight.

Schedule 1 – Amendments

Items 1 to 4

Items 1 to 4 amend the *Social Security (Coronavirus Economic Response – 2020 Measures No. 2) Determination 2020* (the No. 2 Determination) and the *Social Security (Coronavirus Economic Response – 2020 Measures No. 6) Determination 2020* (the No. 6 Determination).

The No. 2 Determination provides for the payment of the COVID-19 supplement to recipients of Austudy Payment for the period 25 September 2020 to 18 December 2020 (inclusive) at rate of \$250 a fortnight.

The No. 6 Determination provides for the payment of the COVID-19 supplement to recipients of Special Benefit, Partner Allowance and Widow Allowance for the period 25 September 2020 to 18 December 2020 (inclusive) at rate of \$250 a fortnight.

The amendments made by items 1 to 4 ensure the supplement will continue to be paid to recipients of these payments at a rate of \$250 a fortnight for social security instalment periods that begin on a day during the period 19 December 2020 to 31 December 2020 (inclusive).

Items 5 and 6

Items 5 and 6 amend sub-item 1(3) of Schedule 1 to the No. 11 Determination. The effect of these items is to amend temporary subsection 23(4AB) of the Act to ensure that, where a person's rate of a social security pension or benefit is reduced to nil due to the person's (or their partner's) employment income, and their standard 12-week employment income nil rate period in paragraph 23(4A)(h) ends during the period 22 June 2020 to 31 December 2020, the person will be treated as receiving a social security pension or benefit until 31 December 2020.

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. 15) Determination 2020

The Social Security (Coronavirus Economic Response – 2020 Measures No. 15) 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

This Determination will ensure the continued payment of the COVID-19 supplement to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance.

The supplement will continue to be paid to recipients of these payments at a rate of \$250 a fortnight for social security instalment periods that begin on a day during the period 19 December 2020 to 31 December 2020 (inclusive).

This Determination also amends temporary subsection 23(4AB)⁶ of the *Social Security Act 1991* (the Act) to extend the employment income nil rate period⁷ to 31 December 2020 for social security benefit and pension recipients whose 12-week employment income nil rate period under paragraph 23(4A)(h) of the Act ends during the period 22 June 2020 to 31 December 2020.

The amendments made by this Determination will ensure that increased partner income from JobKeeper does not result in the loss of social security benefits such as a concession cards.

Human rights implications

The Bill 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).

¹ Inserted by the *Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020*.

² The standard 'employment income nil rate period' is described in subsection 23(4A) of the Act. This subsection has been modified by the *Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020* (for further information, see the Explanatory Statement for this instrument).

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.⁸

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 continue to access other social security benefits until 31 December 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 within the specified period. 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, and
- prevent the need for individuals with employment income to reapply for income support once they become entitled to a rate of payment that is greater than nil.

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.

³ 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].

This Determination provides for the continued payment of the COVID-19 supplement to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance. Payment recipients with a social security instalment period that begins on a day during the period 19 December 2020 to 31 December 2020 (inclusive) will receive the supplement at the rate of \$250 a fortnight. This Determination therefore ensures additional financial assistance to payment recipients through to the end of 2020.

Conclusion

This Determination is compatible with human rights because it enhances an individual's ability to access and retain social security benefits. It also provides for the continued payment of the COVID-19 supplement until the end of 2020 ensuring additional financial assistance to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance.

Anne Ruston, Minister for Families and Social Services