

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Qualification for Crisis Payment – National Health Emergency)
Amendment Determination 2022

Purpose

The Social Security (*Qualification for Crisis Payment – National Health Emergency*) *Amendment Determination 2022* (this Determination) amends the Social Security (Coronavirus Economic Response – 2020 Measures No. 2) Determination 2020 (the No. 2 Determination). The purpose of this Determination is to add to the requirements a person must meet in order to qualify for crisis payment under the *Social Security Act 1991* (the Act) in circumstances relating to the coronavirus known as COVID-19.

Background

In response to the impact of COVID-19, the Act was amended by the *Coronavirus Economic Response Package Omnibus Act 2020* (Omnibus Act) to expand eligibility for crisis payment by inserting section 1061JIA into the Act. Subsection 1061JIA(2) of the Act enables the Minister to determine requirements for qualification for crisis payment relating to a national health emergency for the purposes of paragraph 1061JIA(1)(b) of the Act.

Section 6 of the No. 2 Determination sets out the requirements to satisfy paragraph 1061JIA(1)(b) of the qualification criteria for crisis payment relating to a national health emergency under section 1061JIA of the Act.

Previously, to fulfil paragraph 1061JIA(1)(b) of the Act, the Secretary had to be satisfied that the person is in financial hardship and that the person is in quarantine or self-isolation as a result of advice from the Commonwealth, a State or Territory or from a health professional regarding COVID-19, or is caring for an immediate family member or a member of the person's household in such circumstances.

This Determination amends section 6 of the No. 2 Determination to add a third requirement to satisfy paragraph 1061JIA(1)(b) of the Act, while retaining the previous requirements. The new requirement is that the relevant period of quarantine or self-isolation must have commenced before 1 July 2022. This requirement has been added to reflect the lessening impact of COVID-19, particularly with respect to the need for quarantine and self-isolation in accordance with Commonwealth, State and Territory requirements.

Commencement

This Determination commences on the day after it is registered.

Consultation

Consultation was previously undertaken with the Department of Education, Skills and Employment, the Attorney-General's Department and the Department of Industry, Science, Energy and Resources, in relation to the No. 2 Determination.

In relation to this Determination, consultation was undertaken with Services Australia, the Department of Health, the National Recovery and Resilience Agency and the Department of Prime Minister and Cabinet.

This consultation includes all relevant Australian Public Service stakeholders and subject matter experts. Further consultation was deemed unnecessary as this Determination only entails the cessation of a temporary measure intended to provide short-term support during the COVID-19 pandemic.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation, a RIS is not required for the proposed amendments in this instrument (OBPR ID 43972).

Availability of independent review

Independent internal and external merits review under Part 4 and Part 4A of the *Social Security (Administration) Act 1999* is available in respect of all administrative decisions made under the social security law that are guided by this Determination.

Explanation of the provisions

Section 1 provides that the name of this Determination is the Social Security (Qualification for Crisis Payment – National Health Emergency) Amendment Determination 2022.

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

Section 3 provides that this Determination is made under subsection 1061JIA(2) of the Act.

Section 4 provides that the No. 2 Determination is amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 amends section 6 of the No. 2 Determination by inserting new paragraph (c).

Paragraph (c) sets out a requirement that the Secretary must be satisfied that the quarantine or self-isolation referred to in paragraph (b) commenced before 1 July 2022.

Paragraphs (a) and (b) have not changed. Therefore, to meet paragraph 1061JIA(1)(b) of the Act, the Secretary must be satisfied that:

- the person is in financial hardship;
- the person is in quarantine or self-isolation as a result of advice from the Commonwealth, a State or Territory or from a health professional regarding the coronavirus, or is caring for an immediate family member or a member of the person's household in such circumstances; and
- the quarantine or self-isolation commenced before 1 July 2022.

Statement of Compatibility with Human Rights

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

Social Security Act 1991

Social Security (Qualification for Crisis Payment – National Health Emergency) Amendment Determination 2022

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 effectively discontinues the Crisis Payment for National Health Emergency (COVID-19) by adding the following to the Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020:

“(c) the Secretary is satisfied that the quarantine or self-isolation period commenced before 1 July 2022.”

Human rights implications

The 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 in living conditions in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the rights of the child in Article 26 of the Convention on the Rights of the Child.

Articles 9 and 11 of the ICESCR and Article 26 of the Convention on the Rights of the Child are promoted by the Australian Government’s continued provision of income support payments, concession and health care cards, and supplementary payments. These measures are targeted at vulnerable groups who require assistance and have a flow-on effect to the children of recipients.

Crisis Payment for National Health Emergency (COVID-19) is a supplementary payment that provides additional financial support to income support recipients who are required to self-isolate or quarantine or care for another person who is required to self-isolate or quarantine.

This payment was only ever intended to be a temporary measure during a period of economic uncertainty and the development of vaccines. As the economy is now recovering and the vaccines are being rolled out, consistent with the closure of other Government COVID-19 measures, the Crisis Payment National Health Emergency for the purposes of COVID-19 is also being closed.

Conclusion

This Determination is compatible with human rights because it does not restrict the basic right to social security. To the extent that it may limit this right for recipients who are required to isolate due to COVID-19, it is a reasonable, proportionate and necessary response to achieve the objective of ensuring the long-term sustainability of the social security system in the context of a recovering economy post-pandemic.

Amanda Rishworth, Minister for Social Services