EXPLANATORY STATEMENT

Issued by authority of the Minister for Emergency Management

Social Security Act 1991

Social Security (AGDRP—Adversely Affected Persons—Nepal Flash Floods) Determination 2026

Legislative Authority

The Australian Government Disaster Recovery Payment (AGDRP) provides an immediate, one-off payment to a person adversely affected by a major disaster.

Section 1061K of the *Social Security Act 1991* (the Act) specifies the qualification criteria for the AGDRP. One of the qualification criteria requires a person to be 'adversely affected by a major disaster'.

Subsection 1061L(1) of the Act provides that, for the Act, a person is adversely affected by a major disaster if the person is affected by the major disaster in a way determined by the Minister.

Subsection 1061L(2) of the Act provides that the Minister may determine in writing, for a major disaster, the circumstances in which persons are to be taken to be adversely affected by the major disaster.

Subsection 36(1) of the Act empowers the Minister to determine in writing that an event is a major disaster if the Minister is satisfied that an event is a disaster that has such a significant impact on individuals that a government response is required, or the event is an emergency to which a national emergency declaration relates. Paragraph 36(3)(b) provides that the event may be one that occurs in Australia or outside Australia.

Background

The Minister for Emergency Management has determined under subsection 36(1) of the Act that the effects of the severe flash flooding, including associated landslides and debris flows, in the Federal Democratic Republic of Nepal occurring on and from 26 August 2026 as a result of glacier collapse, is a major disaster within the meaning of the Act. The flooding caused significant damage to homes and infrastructure, disrupted essential services, and isolated several communities in Nepal. The Nepalese government have reported over 1,400 confirmed deaths and over 6000 missing people of whom over 580 are foreign nationals. At the time of making this determination, over 30 Australians remain missing.

The *Social Security (AGDRP—Adversely Affected Persons—Nepal Flash Floods) Determination 2026* (the Determination) sets out the circumstances in which a person is "adversely affected" by this major disaster for AGDRP purposes.

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Consultation

The National Emergency Management Agency (NEMA) consulted with the Department of Foreign Affairs and Trade (DFAT) on impact information.

Information about the support made available to individuals affected by this event will be made available on NEMA's website.

Other matters

Subsection 1061L(3) of the Act provides that a determination made under section 1061L is a legislative instrument. Subsection 1061L(3) of the Act provides that section 42 of the *Legislation Act 2003* does not apply to it. The Determination is therefore exempt from disallowance by the Parliament, in accordance with subsection 44(2) of the *Legislation Act 2003*.

It is appropriate that this instrument is not subject to disallowance because the Determination does not change how the AGDRP operates, nor does it affect the amount payable to individuals, but rather is administrative in nature and is used to ensure the legislative requirements are met so that assistance can be delivered quickly to people adversely affected by major disaster events. Subjecting this instrument to disallowance could delay, or even prevent, timely access to disaster relief, which would undermine the purpose of the payment and the intent of the legislation.

Details of the Determination are set out in **Attachment A**.

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Attachment A

Details of the *Social Security (AGDRP—Adversely Affected Persons—Nepal Flash Floods) Determination 2026*

Section 1 – Name

Section 1 sets out the name of the Determination.

Section 2 – Commencement

Section 2 provides that the Determination commences immediately after it is signed.

For section 12 of the *Legislation Act 2003*, the Determination may commence before it is registered as it will not disadvantage any persons adversely affected by the major disaster.

Section 3 – Authority

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

Section 4 – Definitions

Section 4 provides definitions relevant to the Determination, including *Act, deceased, immediate family member*, *major disaster* and *seriously injured*.

The definition of major disaster incorporates by reference the *Social Security (AGDRP—Major Disaster—Nepal Flash Floods) Determination 2026* (Major Disaster Determination).

The Major Disaster Determination is incorporated as it exists at the commencement of this Determination in accordance with paragraph 14(1)(b) of the *Legislation Act 2003*. The Major Disaster Determination declares the Nepal flash floods as a major disaster for the purposes of the subsection 36(1) of the *Social Security Act 1991*. The Major Disaster Determination is registered on the Federal Register of Legislation and available at www.legislation.gov.au.

The reference allows the Determination to rely on the existing determination of the disaster event under subsection 36(1) of the Act, including the affected areas, rather than reproducing those matters. This ensures that the Determination applies to the same disaster and impacted location identified in the Major Disaster Determination. It also provides a single authoritative source for the description of the disaster and the areas affected, reducing the risk of inconsistency between Commonwealth disaster assistance instruments. Incorporation by reference supports efficient administration by avoiding the need to separately specify and maintain the same geographic information in multiple instruments.

In accordance with paragraph 14(1)(b) of the *Legislation Act 2003*, the Major Disaster Determination is incorporated as existing at the commencement of this Determination. Any amendment to the Major Disaster Determination made after that time will not form part of this Determination unless this Determination is amended.

Section 5 – Persons adversely affected by a major disaster

Subsection 5(1) provides that the Determination applies to the major disaster being the effects of the severe flash flooding, including associated landslides and debris flows, in the Federal

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Democratic Republic of Nepal occurring on and from 26 August 2026 as a result of glacier collapse.

Subsection 5(2) provides that the circumstances in which a person is taken to be adversely affected by the major disaster mentioned in subsection 5(1) are if:

- the person is seriously injured as a direct result of the disaster (paragraph 5(2)(a)); or
- the person is an immediate family member of an Australian citizen or resident who is missing and presumed deceased, or deceased, as a direct result of the disaster (paragraph 5(2)(b)); or
- the person is a carer of a child to whom paragraphs 5(2)(a) or (b) apply (paragraph 5(2)(c)).

The phrase Australian citizen or resident in subsection 5(2) of the instrument is used intentionally to make it abundantly clear to the ordinary reader, on the face of the instrument, that Australian citizens are entitled to the AGDRP. This expression does not displace the meanings of Australian citizen and the broader defined term Australian resident under the Act. The term Australian citizen is a subset of the definition of Australian resident under subsection 7(2) of the Act. The omission of the second Australian in the drafting in subsection 5(2) of the instruments – where the words Australian citizen or resident appear - does not establish a different or freestanding concept of resident.

Section 6 – Repeal

Section 6 provides for the repeal of the Determination two years after it commences.

The automatic repeal of this Determination after two years will affect review rights for applications for the AGDRP lodged within the claiming period, or those who have made late claims with exceptional circumstances prior to the repeal of the Determination. Any review of decisions made on AGDRP applications will be decided based on the Determination in force at the time of the application.

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