

Explanatory Statement

Social Security (Disaster recovery allowance rate calculator) Determination 2020

Social Security Act 1991

Issued by authority of the Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management

The *Social Security (Disaster recovery allowance rate calculator) Determination 2020* (the instrument) is made under subsection 1061KC(2) of the *Social Security Act 1991* (the Act) by the Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management.

Purpose

Section 1061KC of the Act provides that the Minister must specify a method for calculating the fortnightly rate of the Disaster Recovery Allowance (DRA).

The instrument will repeal and replace the *Social Security (Disaster Recovery Allowance) (Rate calculator) Determination 2015* (registered instrument F2015L00022) (the **old instrument**) to provide a more beneficial manner of calculating DRA for persons affected by a disaster determined under section 36A of the Act (a Part 2.23B major disaster).

Under the old instrument, a person's rate of DRA was calculated in relation to their age, living arrangements, partnered status, and whether they are responsible for a dependent child or children and if they qualified, it provided a sliding scale of DRA depending on these factors. This new instrument provides a more straightforward and beneficial calculation of DRA. It compares the person's fortnightly income for the 13 week period after the disaster against Australian average weekly earnings. If the person's post-disaster income is less than the average weekly earnings, the person will receive the maximum rate of Newstart or, for persons under 22 years, Youth Allowance. Factors such as age and partnered status are not taken into account to determine whether they qualify, under the new instrument – every person who qualifies receives the maximum amount based on their circumstances. If the person's post-disaster income for the 13 week period is more than average weekly earnings, the person does not receive an amount of DRA.

A person who has been receiving DRA under the new instrument will cease to be eligible if, based on information provided by the person, their post-disaster income has increased to above the average weekly earnings amount.

The new instrument will commence retrospectively on 1 July 2019. This is to ensure it provides for the more beneficial calculation for persons affected by the bushfires from July 2019. This will capture bushfires in NSW, Victoria, Queensland, South Australia and Tasmania. The new instrument will apply in relation to any a Part 2.23B major disaster determined under section 36A of the *Social Security Act 1991* from 1 July 2019 into the future. The retrospective commencement will not disadvantage anyone in relation to their position from 1 July 2019 until the instrument is registered. While it is anticipated the new instrument will operate beneficially for all persons affected by bushfires since 1 July 2019, in the event it would have an adverse effect on any person (e.g. their entitlement to DRA, or to a particular amount of DRA, will decrease under the new instrument), the instrument provides that the old instrument continues in force for that person.

The instrument repeals the old instrument as it replaces it from 1 July 2019 for all major disasters determined under section 36A of the Act from that date. The new instrument contains a provision saving the effect of the old instrument in the event there is anyone affected by a major disaster

determined under section 36A before 1 July 2019, who would, after 1 July 2019, have still been entitled to DRA under the old instrument.

Section 1 sets out the title of the instrument as the *Social Security (Disaster recovery allowance rate calculator) Determination 2020*.

Section 2 provides that the instrument is taken to have commenced on 1 July 2019. For the purposes of section 12 of the *Legislation Act 2003*, the commencement of the instrument before it is registered will not disadvantage any persons (see section 5 below).

Section 3 contains definitions of terms used in the instrument.

Section 4 sets out a method statement for working out the fortnightly rate of DRA payable to a person in relation to a Part 2.23B major disaster to which the instrument applies. For a person not already in receipt of DRA in relation to the disaster, steps 1 to 6 set out a method to calculate the fortnightly rate payment. Once the person is in receipt of DRA, step 7 provides that DRA ceases if, based on information provided by the person, the person's disaster affected income for a fortnightly period equals or exceeds the average weekly earnings for that fortnight.

Section 5 sets out which Part 2.23B major disasters the instrument applies to, i.e. any disaster determined by the Minister under section 36A of the Act on or after 1 July 2019 (the date on which the instrument is taken to have commenced). However, in order to ensure no person is disadvantaged by the retrospective commencement of the instrument, subsection 5(2) provides that the old instrument continues to apply to a person who would otherwise come under this instrument, if the old instrument would have provided a more beneficial outcome for the person.

Section 6 repeals the *Social Security (Disaster Recovery Allowance) Determination 2015* (registered instrument F2015L00022). Subsection 6(2) saves the effect of the old instrument in relation to Part 2.23B major disasters determined by the Minister before the date of commencement of this instrument i.e. before 1 July 2019.

An instrument made under subsection 1061KC(2) is a legislative instrument subject to disallowance in accordance with section 42 of the *Legislative Instruments Act 2003*.

Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 is provided at Attachment A to this Explanatory Statement.

Consultation

Section 17 of the *Legislative Instruments Act 2003* requires appropriate consultation be undertaken where a proposed instrument is likely to have effect on business. Consultation on the instrument was undertaken with Department of Human Services and Prime Minister and Cabinet. The consultation agencies were supportive of the instrument being made. It was not reasonably practical to consult more broadly as this instrument was required as a matter of urgency to ensure persons who qualify for the DRA have access to more beneficial payments.

Statement of Compatibility with Human Rights

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

Social Security (Disaster recovery allowance rate calculator) Determination 2020

The 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 instrument is made under subsection 1061KC(2) of the *Social Security Act 1991* (the Act) which provides that the Minister must specify a method for calculating the fortnightly rate of the Disaster Recovery Allowance (DRA).

The instrument will repeal and replace the Social Security (Disaster Recovery Allowance) (Rate calculator) Determination 2015 (registered instrument F2015L00022) (the old instrument) to provide a more beneficial manner of calculating DRA for persons affected by a disaster determined under section 36A of the Act (a Part 2.23B major disaster).

Under the old instrument, a person's rate of DRA was calculated in relation to their age, living arrangements, partnered status, and whether they are responsible for a dependent child or children and if they qualified, it provided a sliding scale of DRA depending on these factors. This new instrument provides a more straightforward and beneficial calculation of DRA. It compares the person's fortnightly income for the 13 week period after the disaster against Australian average weekly earnings. If the person's post-disaster income is less than the average weekly earnings, the person will receive the maximum rate of Newstart or, for persons under 22 years, Youth Allowance. Factors such as age and partnered status are not taken into account to determine whether they qualify, under the new instrument – every person who qualifies receives the maximum amount based on their circumstances. If the person's post-disaster income for the 13 week period is more than average weekly earnings, the person does not receive an amount of DRA.

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The instrument repeals the old instrument as it replaces it from 1 July 2019 for all major disasters determined under section 36A of the Act from that date. The new instrument contains a provision saving the effect of the old instrument in the event there is anyone affected by a major disaster determined under section 36A before 1 July 2019, who would, after 1 July 2019, have still been entitled to DRA under the old instrument.

Human rights implications

The instrument takes steps to promote the economic and social rights of persons affected by major disasters, specifically:

- the right to social security (Article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 26, Convention on the Rights of the Child (CRC))

Right to social security

Article 9 of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 26 of the CRC states:

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 9 of ICESCR and Article 26 of the CRC require States to recognise the right of everyone to social security, including social insurance, including establishing a social security system under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must, within the States maximum available resources, provide a minimum essential level of benefits to all individuals and families that enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Instrument promotes the right to social security of those persons entitled to the DRA by ensuring there is a straightforward calculation of DRAs that should be more beneficial than that available under the old determination. If the amount a person was entitled to under the old determination is higher, the person will continue to be entitled to that amount. As a result, the Instrument does not reduce payment for or otherwise disadvantage those with existing DRA entitlements.

The financial assistance provided by the DRA does not replace other forms of welfare that might be available to the person. Where a person may receive a greater rate of payment from another income support payment, their right to apply for another payment is retained.

This will positively affect human rights and will generally advance the right to social security for those entitled to the DRA.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights as it supports and promotes the right to social security.

The Honourable David Littleproud

**Minister for Water Resources, Drought, Rural Finance, Natural Disaster and
Emergency Management**