

EXPLANATORY STATEMENT

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

Social Security Act 1991

*Social Security (Coronavirus Economic Response – 2020 Measures No.2)
Determination 2020*

Purpose

The purpose of the *Social Security (Coronavirus Economic Response – 2020 Measures No.2) Determination 2020* (this Determination) is to specify certain requirements a person must meet in order to qualify for youth allowance, jobseeker payment or crisis payment under the *Social Security Act 1991* (the Act) in circumstances relating to the Coronavirus, known as COVID-19, under new provisions inserted in the Act by the *Coronavirus Economic Response Package Omnibus Act 2020* (Omnibus Act). This Determination also provides for recipients of Austudy payment to receive the COVID-19 supplement from 27 April 2020.

The new requirements will enable more Australians who are financially impacted by COVID-19 to qualify for youth allowance or jobseeker payment and, in certain circumstances, crisis payment.

Background

The Act has been amended by the Omnibus Act to expand eligibility for youth allowance, jobseeker payment and crisis payment for an initial six month period (which may be extended by the Minister), in response to the impact of COVID-19 on individuals, including people who are self-employed or sole-traders.

The amendments made by the Omnibus Act enable the Minister to determine requirements for youth allowance, jobseeker payment and crisis payment relating to the financial impact of COVID-19. The requirements take into consideration the loss of, or reduced, employment and reduced wages or business (including where this is the result of quarantine or self-isolation requirements, or the result of carer responsibilities within families or households arising from quarantine or self-isolation requirements).

Commencement

This Determination commences at the same time as Schedule 11 to the Omnibus Bill, which is 25 March 2020.

Consultation

The Department of Education, Skills and Employment, the Attorney-General's Department and the Department of Industry, Science, Energy and Resources were consulted on this instrument.

Regulation Impact Statement (RIS)

An exemption from RIS requirements was granted by the Prime Minister as there were urgent and unforeseen events.

Legislative instrument

This Determination is a legislative instrument subject to disallowance.

This Determination is made in response to circumstances relating to COVID-19.

Explanation of the provisions

Section 1

This section provides how this Determination is to be cited, that is, as the *Social Security (Coronavirus Economic Response – 2020 Measures No. 2) Determination 2020*.

Section 2

Section 2 provides that this Determination commences at the same time as Schedule 11 to the *Coronavirus Economic Response Package Omnibus Act 2020*.

The provisions of this Determination are beneficial in nature.

Section 3

This section identifies the provisions of the Act, introduced by the Omnibus Act, under which the Minister has authority to make this Determination.

Section 4

Section 4 sets out the requirements a person must satisfy in order to meet paragraph 540BA(1)(a) of the youth allowance qualification criteria in subsection 540BA of the Act, in a range of circumstances relating to the effects of the coronavirus known as COVID-19.

Under paragraph 4(1)(a), a person will meet the requirements if the Secretary is satisfied that the person became unemployed as a result of the adverse economic effects of the coronavirus and the person either meets or is not required to meet the activity test, during the period for which subsection 557(2) of the Act applies (the relevant period), in accordance with subsection 4(2).

Under paragraph 4(1)(b), a person will meet the requirements if the Secretary is satisfied the person is a sole-trader whose business was suspended, or who suffered a reduction in turnover, as a result of the adverse economic effects of the coronavirus and meets, or is not required to meet, the activity test for the relevant period in accordance with subsection 4(2).

Under paragraph 4(1)(c), a person will meet the requirements if the Secretary is satisfied that the person's working hours were reduced (including if they were

reduced to zero) as a result of the adverse economic effects of the coronavirus, and the person:

- meets, or is not required to meet, the activity test for the relevant period in accordance with subsection 4(2); and
- the Secretary is satisfied that during the relevant period, the person:
 - (a) is either not entitled to receive a leave payment; or has taken reasonable steps to access any leave payment to which the person may be entitled;
 - (b) is receiving a leave payment but the total of which is less than the amount of youth allowance that would be payable to the person in the relevant period if the person's claim was granted in accordance with subsection 4(3).

Under paragraph 4(1)(d), a person will meet the requirements if the Secretary is satisfied that, throughout the relevant period, 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 and:

- as a result, the person's working hours were reduced (including if they were reduced to zero); and
- meets, or is not required to meet, the activity test for the relevant period in accordance with subsection 4(2); and
- the Secretary is satisfied that during the relevant period, the person:
 - (a) is not entitled to receive a leave payment; or
 - (b) has taken reasonable steps to access any leave payment to which the person may be entitled; or
 - (c) is receiving a leave payment but as a result of the adverse economic effects of the coronavirus the payment is less than it otherwise would have been; or
 - (d) is receiving a leave payment but the total amount of which is less than the amount of youth allowance that would be payable to the person in the relevant period if the person's claim were granted.

Health alert information relevant to coronavirus and quarantine or self-isolation is available from the Commonwealth Department of Health website, www.health.gov.au, and from state and territory government websites.

Section 5

Section 5 sets out the requirements a person must satisfy in order to meet paragraph 593(5)(a) of the youth allowance qualification criteria in subsection 593(5) of the Act, in a range of circumstances relating to the effects of the coronavirus.

Under paragraph 5(1)(a), a person will meet the requirements if the Secretary is satisfied that the person became unemployed as a result of the adverse economic effects of the coronavirus and the person either meets or is not required to meet the activity test, during the period for which subsection 646(2) of the Act applies (the relevant period), in accordance with subsection 5(2).

Under paragraph 5(1)(b), a person will meet the requirements if the Secretary is satisfied the person is a sole-trader whose business was suspended, or who suffered a reduction in turnover, as a result of the adverse economic effects of the coronavirus and meets, or is not required to meet, the activity test for the relevant period in accordance with subsection 5(2).

Under paragraph 5(1)(c), a person will meet the requirements if the Secretary is satisfied that the person's working hours were reduced (including if they were reduced to zero) as a result of the adverse economic effects of the coronavirus, and the person:

- meets, or is not required to meet, the activity test for the relevant period in accordance with subsection 5(2); and
- the Secretary is satisfied that during the relevant period, the person:
 - (a) is either not entitled to receive a leave payment; or
 - (b) has taken reasonable steps to access any leave payment to which the person may be entitled;
 - (c) is receiving a leave payment but as a result of the adverse economic effects of the coronavirus the payment is less than it otherwise would have been; or
 - (d) is receiving a leave payment but the total of which is less than the amount of youth allowance that would be payable to the person in the relevant period if the person's claim was granted in accordance with subsection 5(3).

Under paragraph 5(1)(d), a person will meet the requirements if the Secretary is satisfied that throughout the relevant period, 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 and:

- as a result, the person's working hours were reduced (including if they were reduced to zero); and
- meets, or is not required to meet, the activity test for the relevant period in accordance with subsection 5(2); and
- the Secretary is satisfied that during the relevant period, the person:
 - (a) is not entitled to receive a leave payment; or
 - (b) has taken reasonable steps to access any leave payment to which the person may be entitled; or
 - (c) is receiving a leave payment but as a result of the adverse economic effects of the coronavirus the payment is less than it otherwise would have been; or
 - (d) is receiving a leave payment but the total amount of which is less than the amount of jobseeker payment that would be payable to the person in the relevant period if the person's claim were granted.

Health alert information relevant to coronavirus and quarantine or self-isolation is available from the Commonwealth Department of Health website, www.health.gov.au, and from state and territory government websites.

Example 1

Jennifer is a self-employed glass artist who primarily earns income through commissions and selling her work through other parties, such as homewares stores, on a consignment basis, whereby the stores receive a commission from every sale.

Due to the coronavirus, income from sales has stopped as the homewares shops have all closed, so Jennifer's income has significantly reduced. Subject to meeting other criteria, Jennifer will qualify for jobseeker payment.

Example 2

Leonie is in her mid-30s, with two dependent children aged 10 and 12 and works shift work as a telephone consultant for an insurance company. The economic downturn due to coronavirus has caused the insurance company to reduce Leonie's shifts, but she still works infrequently. As Leonie's working hours have been reduced as a result of coronavirus, subject to meeting other criteria Leonie will qualify for jobseeker payment.

Section 6

Section 6 sets out the requirements a person must satisfy in order to meet paragraph 1061JIA(1)(b) of the qualification criteria for crisis payment under section 1061JIA of the Act, relating to where there is a national health emergency.

The Secretary must be satisfied 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 the coronavirus, or is caring for an immediate family member or a member of the person's household in these circumstances.

Health alert information relevant to coronavirus and quarantine or self-isolation is available from the Commonwealth Department of Health website, www.health.gov.au, and from state and territory government websites.

Example

Chad is single and was working as a casual labourer when he came in close contact with a person who was subsequently diagnosed with COVID-19. Chad is advised to self-isolate for 14 days and as he does not have any employee leave entitlements to cover the period of isolation, he makes a claim for jobseeker payment and crisis payment. Chad is in financial hardship and qualifies for crisis payment. Immediately after Chad's claim for jobseeker payment is granted he receives a crisis payment of an amount equivalent to one week of the maximum basic rate of jobseeker payment.

Section 7

Section 7 provides that Austudy payment is a determined payment for the purposes of the COVID-19 supplement under section 1210B of the Act. Section 7 provides that a person's Austudy payment is to be increased by a COVID-19 supplement of \$550 per fortnight for a period beginning on 27 April 2020 and ending at the end of the 6-

month period from when this Determination commences. This Determination commences at the same time as Schedule 11 to the Omnibus Act, which is 25 March 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.2) 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

The purpose of the *Social Security (Coronavirus Economic Response – 2020 Measures No.2) Determination 2020* (this Determination) is to specify the requirements a person must meet in order to qualify for youth allowance, jobseeker payment or crisis payment under the *Social Security Act 1991* (the Act) in circumstances relating to the Coronavirus known as COVID-19, and to provide for recipients of Austudy payment to receive the COVID-19 supplement from 27 April 2020.

The Act has been amended to temporarily expand eligibility for youth allowance, jobseeker payment or crisis payment in acknowledgement of the impact of COVID-19 on individuals, including sole-traders.

The amendments made by the Omnibus Act enable the Minister to determine requirements for youth allowance, jobseeker payment and crisis payment relating to the financial impact of COVID-19. The requirements take into consideration the loss of, or reduced, employment and reduced wages or business (including where this is the result of quarantine or self-isolation requirements, or the result of carer responsibilities within families or households arising from quarantine or self-isolation requirements).

The new criteria in this Determination will enable more Australians who are financially impacted by COVID-19 to qualify for youth allowance, jobseeker payment or crisis payment.

Human rights implications

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

Articles 9 and 11 of the ICESCR are promoted by providing payments to assist in achieving an adequate standard of living. This is achieved by creating qualification criteria relating to the financial impact of COVID-19. The pursuit of this objective also

promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

This Determination promotes article 26 of the CRC by enhancing the rights of the child to social security, as the qualification criteria apply to recipients with children. The payments are targeted at vulnerable groups and has a flow on effect to the children of recipients by increasing the support for families.

Conclusion

This Determination is compatible with human rights because it promotes the protection of human rights for vulnerable groups in society.

Anne Ruston, Minister for Families and Social Services