

## **EXPLANATORY STATEMENT**

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

*Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*

*Social Security (Coronavirus Economic Response—2020 Measures No. 5)  
Determination 2020*

### **Background**

Item 28 of Schedule 2 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020* (the Act) provides that the Minister for Families and Social Services may, by legislative instrument, determine modifications of Part 5 of the *Social Security (Administration) Act 1999* (the Administration Act) in connection with payments under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*, including applications for such payments.

Part 5 of the Administration Act covers information management under the social security law, including confidentiality provisions.

The Minister must be satisfied that a determination made under Item 28 of Schedule 2 to the Act is in response to circumstances relating to the Coronavirus known as COVID-19. Such a determination is a legislative instrument subject to disallowance.

### **Purpose**

The Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020 (this Determination) modifies section 204A of the Administration Act to facilitate the provision of information (including tax file number information) by the Commissioner of Taxation (the Commissioner) to the Secretary of the Department of Social Services (the Secretary).

The modifications to section 204A made by this Determination allow the Secretary to require the Commissioner to provide information regarding JobKeeper payments under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*. Once the Secretary receives such information, the modified version of section 204A will allow the Secretary to use the information provided by the Commissioner to determine if a person who will benefit from a JobKeeper payment has made a claim for a social security payment or is receiving, or has received, a social security payment under the social security law. The modified version of section 204A will also allow the Secretary to use the information provided by the Commissioner to determine if a person is qualified for a social security payment or whether such a payment is payable to a person.

The temporary modification to section 204A of the Administration Act made by this Determination will assist Services Australia to ensure that individuals who benefit from JobKeeper payments receive their correct entitlements under social security law.

This Determination only modifies the operation of section 204A of the Administration Act in respect of information relating to the JobKeeper payment. The Determination does not affect any other exchanges of information between the Commissioner and Services Australia.

This Determination is made in response to circumstances relating to the Coronavirus known as COVID-19.

This Determination has no operation after 31 December 2020.

## **Commencement**

The Determination commences immediately after it is registered on the Federal Register of Legislation.

## **Consultation**

Consultation was undertaken with Services Australia, the Australian Taxation Office and Treasury.

## **Regulation Impact Statement (RIS)**

An exemption from the Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events (OBPR ID: 26371).

## **Explanation of the provisions**

### Section 1

Section 1 provides how this Determination is to be cited, that is, as the *Social Security (Coronavirus Economic Response – 2020 Measures No. 5) Determination 2020*.

### Section 2

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

### Section 3

Section 3 provides that this Determination is made under item 28 of Schedule 2 to the Act.

### Section 4

Section 4 provides that each modification of the operation of Part 5 of the Administration Act as set out in a Schedule to this Determination is determined for the purposes of item 28 of Schedule 2 to the Act.

## **Schedule 1 – Modifications to the Administration Act**

### **Item 1 – Modifications of section 204A**

Item 1 modifies section 204A of the Administration Act, which is in Part 5 of the Administration Act. Section 204A relates to the collection and use of information (including tax file numbers) by the Secretary.

Currently, subsection 204A(1) of the Administration Act provides that the Secretary may require the Commissioner to provide the Secretary with information about people, including tax file numbers, that was contained in TFN declarations lodged with the Commissioner under Division 3 of Part VA of the *Income Tax Assessment Act 1936*.

Sub-item 1(1) of Schedule 1 to this Determination varies section 204A of the Administration Act to insert a new subsection 204A(1A) after subsection 204A(1). This new subsection provides that the Secretary may require the Commissioner to provide the Secretary with information about entities, including tax file numbers, that is either in the possession of the Commissioner or comes into the possession of the Commissioner after the requirement under new subsection 204A(1A) is made (including information that comes into existence after the requirement is made).

Under the new subsection, the Secretary may require the Commissioner to provide:

- information relating to the entitlement of entities to JobKeeper payments under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* for individuals; or
- information in notifications to the Commissioner that resulted in that entitlement (whether the information is about those entities or those individuals); or
- information relating to such payments that those entities are to receive, are receiving or have received.

The requirement on the Commissioner may be of a standing nature. This avoids the need for the Secretary to regularly issue new requirements to obtain updated information from the Commissioner.

Currently, subsection 204A(2) of the Administration Act imposes limitations on the Secretary on her use of information provided by the Commissioner in response to a requirement under subsection 204A(1). Under the current subsection 204A(2), information provided to the Secretary under subsection 204A(1) may only be used to:

- detect cases in which amounts of social security payments under the social security law have been paid when they should not have been paid;
- verify, in respect of persons who have made claims for social security payments under the social security law, the qualification of those persons for those payments;
- verify, in respect of persons who have made claims under the social security law for seniors health cards, or health care cards that are income-tested for those persons, the qualification of those persons for those cards;

- establish whether the rates at which social security payments under the social security law are being, or have been, paid are, or were, correct.

Sub-items 1(2) and 1(3) of this Determination vary subsection 204A(2) to allow for information provided to the Secretary under a requirement made under subsection 204A(1) or new subsection 204A(1A) to be used for the purpose of determining whether the entities or individuals referred to in new subsection 204A(1A) have made claims for social security payments under the social security law or are receiving, or have received, social security payments under the social security law. The modified version of section 204A will also allow the Secretary to use the information provided by the Commissioner to determine if a person is qualified for a social security payment or whether such a payment is payable to a person.

This amendment will permit Services Australia to review information provided by the Commissioner regarding JobKeeper payments to identify individuals who will receive, are receiving or have received the benefit of a JobKeeper payment and who have claimed, are receiving or have received social security payments. It will also permit Services Australia to use information provided by the Commissioner to determine if a person is qualified for a social security payment or whether such a payment is payable to a person. This information will assist Services Australia to ensure that individuals are not overpaid social security payments.

Only individuals may claim and receive social security payments. However, the modifications to section 204A of the Administration Act permit the Secretary to provide information in relation to both individuals and “entities”. This is because some individuals (for example, sole traders) may be regarded as an “entity” (as that term is defined in the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*).

All information provided to the Secretary by the Commissioner under the modified section 204A of the Administration Act would be “protected information” for the purposes of the social security law and would be covered by the confidentiality provisions in Part 5 of the Administration Act.

## 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. 5) 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**

Item 28 of Schedule 2 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020* (the Act) provides that the Minister for Families and Social Services may, by legislative instrument, determine modifications of Part 5 of the *Social Security (Administration) Act 1999* (the Administration Act) in connection with payments under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*, including applications for such payments.

Part 5 of the Administration Act covers information management, including confidentiality provisions.

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. 5) Determination 2020 (this Determination) modifies section 204A of the Administration Act to facilitate the provision of information (including tax file number information) by the Commissioner of Taxation (the Commissioner) to the Secretary of the Department of Social Services (the Secretary).

The modifications to section 204A made by this Determination allow the Secretary to require the Commissioner to provide information regarding JobKeeper payments under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*. Once the Secretary receives such information, the modified version of section 204A will allow the Secretary to use the information to determine if a person has made claims for social security payments or is receiving, or has received, social security payments under the social security law. The modified version of section 204A will also allow the Secretary to use the information provided by the Commissioner to determine if a person is qualified for a social security payment or whether such a payment is payable to a person.

The temporary modification to section 204A of the Administration Act made by this Determination will assist Services Australia to ensure that individuals who benefit from JobKeeper payments receive their correct entitlements under the social security law.

## **Human rights implications**

The Determination engages the right to privacy in article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy. It also provides that persons have a right to the protection of the law against such interference.

The use of the term "arbitrary" in Article 17 means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in all the circumstances. It is recognised that limitations may be imposed on the general prohibition on interference with privacy, provided that such limitations are reasonable, necessary and proportionate.

The modifications to section 204A of the Administration Act made by this Determination are reasonable, necessary and proportionate as they address a particular situation where a public benefit will flow from the exchange of the information between Services Australia and the Australian Taxation Office.

The exchange of information between these two agencies ensures that Services Australia can correctly assess a person's entitlements under the social security law by having regard to any entitlement to JobKeeper payment. The exchange of this information supports the integrity of the social security law by ensuring people are paid the correct social security entitlements.

The modifications to section 204A ensure that information may only be used for limited purposes (set out in subsection 204A(2) of the Administration Act as modified by this Determination). The modified section 204A does not provide the Secretary with a general power to collect, use and disclose information about people for any purpose.

Further, the *Privacy Act 1988* continues to apply to the collection, use and disclosure of information. Information obtained by Services Australia under the modified section 204A is also subject to secrecy provisions contained in Part 5 of the Administration Act. Criminal sanctions apply for the unauthorised use or disclosure of information under the social security law (see section 204 of the Administration Act).

This Determination is time-limited and has no operation after 31 December 2020 and is being made in response to the Coronavirus known as COVID-19 and the resulting introduction of the new JobKeeper payment. This Determination does not provide for ongoing information sharing arrangements between Services Australia and the Australian Taxation Office and is only intended to address a short-term need for increased information sharing between the two agencies.

## **Conclusion**

This Determination is compatible with human rights. To the extent that the right to privacy is limited, those limitations are reasonable, necessary and proportionate for the reasons outlined above.

**Anne Ruston, Minister for Families and Social Services**