

## **EXPLANATORY STATEMENT**

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

*Coronavirus Economic Response Package Omnibus Act 2020*

*Social Security (Coronavirus Economic Response – 2020 Measures No. 7)  
Determination 2020*

### **Background**

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Act) amended the *Social Security Act 1991* (Social Security Act) to provide additional financial assistance to Australians financially impacted by the Coronavirus (COVID-19 supplement).

Item 40A of Schedule 11 to the Act allows the Minister for Families and Social Services (the Minister) to make a determination that modifies the operation of the social security law relating to qualification for, or the rate of, a social security payment. 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 and cannot operate after 31 December 2020.

The *Social Security (Coronavirus Economic Response – 2020 Measures No. 7) Determination 2020* (this Determination) is made in response to circumstances relating to COVID-19.

This Determination has no operation after 31 December 2020.

### **Purpose**

This Determination varies the Social Security Act to remove the liquid assets test waiting period and seasonal work preclusion period for social security claimants who had already served a part of such period prior to 25 March 2020, and for people who claim during the periods covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act.

This Determination also clarifies that the:

- ordinary waiting period (OWP) stopped applying immediately prior to the commencement of Schedule 11 to the Act and will resume after the end of the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act; and
- newly arrived resident's waiting period (NARWP) is suspended as of 25 March 2020 and the requirement to serve any remainder of that waiting period will start again after the end of the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act for both new claimants and existing claimants who had not completed serving their waiting period prior to 25 March 2020 (the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act will count towards serving the waiting period).

The period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act is a period of six months beginning on the day on which Schedule 11 commences (25 March 2020), unless extended by the Minister through a legislative instrument.

### **Commencement**

This Determination commences immediately after the commencement of Schedule 11 to the Act. The Act commenced on 25 March 2020 and this Determination is retrospective in nature. This is authorised by section 12 of the *Legislation Act 2003* (Legislation Act).

This Determination is entirely beneficial in nature as it exempts certain waiting and preclusion periods and clarifies the operation of other waiting periods so that eligible welfare recipients are able to receive their financial assistance sooner. For the purposes of subsection 12(2) of the Legislation Act, the commencement of this Determination does not affect the rights of a person so as to disadvantage the person and does not impose liabilities on a person in respect of anything done or omitted to be done before this Determination was registered.

### **Consultation**

Due to the need to take urgent action to provide additional social security support to Australians affected by the unforeseen Coronavirus pandemic, no specific consultation was undertaken on this Determination.

### **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 is 26371.

## **Explanation of the provisions**

### Item 1 – Name

Item 1 names this Determination the Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020.

### Item 2 – Commencement

Item 2 provides that this Determination commences immediately after Schedule 11 to the Act commences. This means that this Determination commences on 25 March 2020.

### Item 3 – Authority

Item 3 provides that this Determination is made under item 40A of Schedule 11 to the Act.

### Item 4 – Schedule 1 - Modifications

Item 4 provides that the modifications of the Social Security Act in Schedule 1 are made under item 40A of Schedule 11 to the Act.

### Item 5 – Schedule 2 – Amendments

Item 5 provides that Schedule 2 amends Social Security (Coronavirus Economic Response – 2020 Measures No. 1) Determination 2020 in accordance with its terms.

## Schedule 1 – Modifications of the Social Security Act 1991

### Item 1 – Variation of section 500WA

Section 500WA of the Social Security Act provides for when a parenting payment claimant is subject to the ordinary waiting period.

Item 1 varies section 500WA by omitting subsection 500WA(4) and substituting a new subsection 500WA(4) and a new subsection 500WA(5). New subsection 500WA(4) clarifies that for a person who was subject to an ordinary waiting period on 24 March 2020, that waiting period is taken to have ended on that day, such that parenting payment is payable to the person as of 25 March 2020.

Due to the operation of the Social Security (Ordinary Waiting Period Exemption) Instrument 2020, an ordinary waiting period has not been applied to Parenting Payment claimants since 12 March 2020.

A new subsection 500WA(5) is also inserted to provide that a person who makes a claim for parenting payment during the period covered by subsection 504(2) (a six-month period commencing on 25 March 2020, unless extended by the Minister), is not subject to the whole of the ordinary waiting period and the person will not have to resume serving their ordinary waiting period at the end of the period covered by subsection 504(2).

#### Item 2 – Variation of section 500X

Section 500X provides for when a parenting payment claimant is subject to the newly arrived resident's waiting period.

Item 2 varies section 500X by adding words at the end of subsection 500X(6) to the effect that the newly arrived resident's waiting period does not apply to a person during the period covered by subsection 504(2) even if subsection 500X(1) applied to the person before that period started. This item clarifies that even if a person had already started serving their waiting period, the waiting period is suspended for the period covered by subsection 504(2) and will recommence after the period ends.

#### Item 3 – Variation of section 500Y

Section 500Y provides for the duration of the newly arrived resident's waiting period.

Item 3 varies section 500Y by adding subsections 500Y(3) and 500Y(4).

Subsection 500Y(3) provides that subsection 500Y(4) applies if a person would have, apart from the operation of subsection 500X(6), been subject to a newly arrived resident's waiting period during the period (the relevant period) covered by subsection 504(2).

Subsection 500Y(4) provides that the person is taken, for the purposes of section 500Y, to have been subject to the newly arrived resident's waiting period (and time continues to run in relation to that period) during the relevant period.

This item clarifies that even though the waiting period is suspended for the period covered by subsection 504(2), the relevant period is taken to count towards serving the newly arrived resident's waiting period, such that at the end of the relevant period, the person will only be required to serve any remainder of the waiting period that had not yet been served.

#### Item 4 – Variation of section 500Z

Subsection 500Z(2) provides that parenting payment is not payable to a person who is subject to the seasonal work preclusion period.

Item 4 varies section 500Z to omit subsection 500Z(4) and substitute a new subsections 500Z(4). This new subsection applies such that subsection 500Z(2) does not apply to a person and is taken to have never applied to a person serving the preclusion period on 25 March 2020.

Item 4 also inserts a new subsection 500Z(5) to clarify that a person who makes a claim for parenting payment during the period covered by subsection 504(2) and, if apart from new subsection 500Z(5) the person would be subject to a seasonal work preclusion period, the person is not subject to the whole, or any part of the preclusion period such that the person will no longer be required to serve the preclusion period after the end of the period covered by subsection 504(2).

#### Item 5 – Variation of section 549A

Section 549A provides for when a youth allowance claimant is subject to a liquid assets test waiting period.

Item 5 omits subsection 549A(8) and substitutes a new subsection 549A(8) which provides that a person is not subject to a liquid assets test waiting period if any part of that period occurs during the period covered by subsection 557(2). This has the effect of removing the liquid assets test waiting period for any claimant during the period covered by subsection 557(2), including those who had already served a part of their waiting period prior to 25 March 2020. The claimant will also no longer be required to serve the waiting period after the end of the period covered by subsection 557(2).

#### Item 6 – Variation of section 549CA

Section 549CA provides for when youth allowance claimants are subject to the ordinary waiting period.

Item 6 varies section 549CA by omitting subsection 549CA(6) and substituting a new subsection 549CA(6) which will clarify that for a person who was subject to an ordinary waiting period on 24 March 2020, that waiting period is taken to have ended on that day, such that youth allowance is payable to the person as of 25 March 2020.

Due to the operation of the *Social Security (Ordinary Waiting Period Exemption) Instrument 2020*, an ordinary waiting period has not been applied to Youth Allowance (jobseekers) since 12 March 2020.

A new subsection 549CA(7) is also inserted to provide that if a person makes a claim for youth allowance during the period covered by subsection 557(2), then the person is not subject to the whole of the ordinary waiting period and the person will not have to resume serving their ordinary waiting period at the end of the period covered by the period covered by subsection 557(2).

#### Item 7 – Variation of section 549D

Section 549D provides for when youth allowance claimants are subject to the newly arrived resident's waiting period.

Item 7 varies section 549D by omitting subsection 549D(6A) and substituting a new subsection 549D(6A) that provides that the newly arrived resident's waiting period does not apply to a person during the period covered by subsection 557(2) even if subsection 549D(1) applied to the person before that period started. This item clarifies that even if a person had already started serving their waiting period, the waiting period is suspended for the period covered by subsection 557(2) and will recommence after the end of that period.

#### Item 8 – Variation of section 549E

Section 549E provides for the duration of the newly arrived resident's waiting period.

Item 8 varies section 549E by inserting the word "(1)" before the word "If"; and adding subsections 549E(2) and 549E(3).

Subsection 549E(2) provides that subsection 549E(3) applies if a person would have, apart from the operation of subsection 549D(6A), been subject to a newly arrived resident's waiting period during the period (the relevant period) covered by subsection 557(2).

Subsection 549E(3) provides that the person is taken, for the purposes of section 549E, to have been subject to the newly arrived resident's waiting period (and time continues to run in relation to that period) during the relevant period.

This item clarifies that even though the waiting period is suspended for the period covered by subsection 557(2), the relevant period is taken to count towards serving the newly arrived resident's waiting period, such that at the end of the relevant period, the person will only be required to serve any remainder of the waiting period that had not yet been served.

#### Item 9 – Variation of section 553C

Section 553C provides for when youth allowance claimants are subject to a seasonal work preclusion period.

Item 9 varies subsection 553C to omit subsection 553C(7) and substitute a new subsection 553C(7).

The substituted subsection 553C(7) provides that the requirement for a person to serve the seasonal work preclusion period in subsection 553C(2) does not apply to a person and is taken to have never applied to a person already serving the preclusion period on 25 March 2020.

Item 9 also inserts a new subsection 553C(8) to clarify that if a person makes a claim for youth allowance during the period covered by subsection 557(2) and, if apart from subsection 553C(5) the person would be subject to a seasonal work preclusion period, the person is not subject to the whole, or any part, of the preclusion period such that the person will no longer be required to serve the preclusion period after the end of the period covered by subsection 504(2).

#### Item 10 – Variation of section 575A

Section 575A provides for when an Austudy claimant is subject to a liquid assets test waiting period.

Item 10 varies section 575A by adding a new subsection 575(5) to the effect that the liquid assets test waiting period does not apply to a person, if any of their waiting period occurs during the period covered by subsection 557(2). This has the effect of removing the liquid assets test waiting period for any claimant during the period covered by subsection 557(2), including those who had already served a part of their waiting period prior to 25 March 2020. The claimant will also no longer be required to serve the waiting period after the end of the period covered by subsection 557(2).

#### Item 11 – Variation of section 575D

Section 575D provides for when Austudy claimants are subject to the newly arrived resident's waiting period.

Item 11 modifies section 575D by inserting a new subsection 575D(2A) after subsection 575D(2). The new subsection provides that the newly arrived resident's waiting period does not apply to a person during the period covered by subsection 557(2) even if subsection 575D(1) applied to the person before that period started. This item clarifies that even if a person had already started serving their waiting period, the waiting period is suspended for the period covered by subsection 557(2) and will resume after the end of that period.

#### Item 12 – Variation of Section 575E

Section 575E provides for the duration of the newly arrived resident's waiting period.

Item 12 varies section 575E by inserting the word "(1)" before the word "If"; and adding subsections 575E(2) and 575E(3).

Subsection 575E(2) provides that subsection 575E(3) applies if a person would have, apart from the operation of subsection 575D(2A), been subject to a newly arrived resident's waiting period during the period (the relevant period) covered by subsection 557(2).

Subsection 575E(3) provides that the person is taken, for the purposes of section 575E, to have been subject to the newly arrived resident's waiting period (and time continues to run in relation to that period) during the relevant period.

This item clarifies that even though the waiting period is suspended for the period covered by subsection 557(2), the relevant period is taken to count towards serving the newly arrived resident's waiting period, such that at the end of the relevant period, the person will only be required to serve any remainder of the waiting period that had not yet been served.

#### Item 13 – Variation of section 575EA

Subsection 575EA(2) provides that Austudy is only payable when a person has served their seasonal work preclusion period.

Item 13 varies section 575EA by adding subsection 575EA(4). This new subsection provides that the requirement for a person to serve their seasonal work preclusion period does not apply and is taken to have never applied to a person who was subject to the preclusion period on 25 March 2020.

Item 13 also inserts a new subsection 575EA(5). This provides that if a person makes a claim for Austudy payment during the period covered by subsection 557(2), and apart from subsection 575EA(5), the person would be subject to a seasonal work preclusion period, then despite subsection 575EA(2), the person is not subject to the whole, or any part, of the preclusion period.

Subsections 575EA(4) and (5) have the effect of exempting eligible Austudy claimants, including those who had already started serving a part of the preclusion period prior to 25 March 2020, from serving the whole of the seasonal work preclusion period. The claimant will also no longer be required to serve the preclusion period after the end of the period covered by subsection 557(2).

#### Item 14 – Variation of section 598

Section 598 provides for when a jobseeker claimant is subject to the liquid assets test waiting period.

Item 14 varies section 598 by substituting subsection 575EA(8C). This provides that a person is not subject to a liquid assets test waiting period if any part of that period occurs during the period covered by subsection 646(2). This item has the effect of exempting jobseeker claimants from the liquid assets test waiting period, including those who had already started serving a part of it prior to 25 March 2020. The claimant will also no longer be required to serve the waiting period after the end of the period covered by subsection 646(2).

#### Item 15 – Variation of section 620

Section 620 provides for when a jobseeker claimant is subject to the ordinary waiting period.

Item 15 varies section 620 by omitting subsection 620(5) and substituting a new subsection that will clarify that for a person who was subject to an ordinary waiting period on 24 March 2020, that waiting period is taken to have ended on that day, such that jobseeker payment is payable to the person as of 25 March 2020.

Due to the operation of the Social Security (Ordinary Waiting Period Exemption) Instrument 2020, an ordinary waiting period has not been applied to a jobseeker claiming Newstart Allowance since 12 March 2020 or claiming jobseeker payment since it was introduced on 20 March 2020.



A new subsection 620(6) is also inserted to provide that a person who makes a claim for jobseeker payment during the period covered by subsection 646(2), is not subject to the whole of the ordinary waiting period and the person will not have to resume serving their ordinary waiting period at the end of the period covered by subsection 646(2).

#### Item 16 – Variation of section 623A

Section 623A provides for when jobseeker payment claimants are subject to the newly arrived resident's waiting period.

Item 16 varies section 623A by amending subsection 623A(10) to the effect that the newly arrived resident's waiting period does not apply to a person during the period covered by subsection 646(2) even if subsection 623A(1) applied to the person before that period started. This item clarifies that even if a person had already started serving their waiting period, the waiting period is suspended for the period covered by subsection 646(2) and will resume after the period ends.

#### Item 17 – Variation of section 623B

Section 623B provides for the duration of the newly arrived resident's waiting period.

Item 17 varies section 623B by adding subsections 623B(4) and 623B(5).

Subsection 623B(4) provides that subsection 623B(4) applies if a person would have, apart from the operation of subsection 623A(10), been subject to a newly arrived resident's waiting period during the period (the relevant period) covered by subsection 646(2).

Subsection 623B(5) provides that the person is taken, for the purposes of section 623B, to have been subject to the newly arrived resident's waiting period (and time continues to run in relation to that period) during the relevant period.

This item clarifies that even though the waiting period is suspended for the period covered by subsection 646(2), the relevant period is taken to count towards serving the newly arrived resident's waiting period, such that at the end of the relevant period, the person will only be required to serve any remainder of the waiting period that had not yet been served.

#### Item 18 – Variation of section 633

Subsection 633(2) provides that jobseeker payment is not payable to a person who is subject to a seasonal work preclusion period.

Item 18 varies section 633 by adding subsection 633(7) to provide that the requirement for a person to serve their seasonal work preclusion period does not apply and is taken to have never applied to a person who was subject to the preclusion period on 25 March 2020.

Item 18 also inserts a new subsection 633(8). This provides that if a person makes a claim for jobseeker payment during the period covered by subsection 646(2), and apart from subsection 633(8), the person would be subject to seasonal work preclusion period, then despite subsection 633(2), the person is not subject to the whole, or any part, of the preclusion period.

Subsections 633(7) and (8) have the effect of exempting eligible jobseeker claimants including those who had already started serving a part of the preclusion period prior to 25 March 2020, from serving the whole seasonal work preclusion period, including any part already served. The claimant will also no longer be required to serve the preclusion period after the end of the period covered by subsection 646(2).

#### Item 19 – Variation of section 739A

Section 739A provides for when special benefit claimants are subject to the newly arrived resident's waiting period.

Item 19 varies section 739A by adding, at the end of subsection 739A(10), the words "(even if subsection (1) or (2) of this section applied to the person before that period started)". This clarifies that even if a person had already started serving the waiting period, the waiting period is suspended for the period covered by subsection 646(2) and will resume after the period ends.

Item 19 also inserts subsections 739A(11) and 739A(12).

Subsection 739A(11) provides that subsection 739A(12) applies if a person would have, apart from the operation of subsection 739A(10), been subject to a newly arrived resident's waiting period during the period (the relevant period) covered by subsection 646(2).

Subsection 739A(12) provides that the person is taken, for the purposes of section 739A, to have been subject to the newly arrived resident's waiting period (and time continues to run in relation to that period) during the relevant period.

This item clarifies that even though the waiting period is suspended for the period covered by subsection 646(2), the relevant period is taken to count towards serving the newly arrived resident's waiting period, such that at the end of the relevant period, the person will only be required to serve any remainder of the waiting period that had not yet been served.

#### Item 20 – Variation of section 745M

Section 745M provides that special benefit payment is not payable to a person subject to the seasonal work preclusion period.

Item 20 varies section 745M by substituting subsection 745M(4) to provide that the requirement for a person to serve the seasonal work preclusion period in subsection 745M(2) does not apply to a person and is taken to have never applied to a person already serving the preclusion period on 25 March 2020.

Item 20 also inserts a new subsection 745M(5). This subsection applies to a person who makes a claim for special benefit payment during the period covered by subsection 646(2). New subsection 745M(5) provides that, if apart from subsection 745M(5) the person would be subject to a seasonal work preclusion period, the person is not subject to the whole, or any part, of the preclusion period such that the person will no longer be required to serve the preclusion period after the end of the period covered by subsection 646(2).

#### Schedule 2 – Amendments

This Schedule makes amendments to the Social Security (Coronavirus Economic Response – 2020 Measures No. 1) Determination 2020 (Instrument No. 1).

#### Item 1 – Items 4 to 6 of Schedule 1

This item repeals items 4 to 6 of Schedule 1 to Instrument No. 1 as Schedule 1 to this Determination (Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020) inserts new provisions that replace those in Instrument No. 1.

#### Item 2 – Items 9 to 11 of Schedule 1

This item repeals items 9 to 11 of Schedule 1 to Instrument No. 1 as Schedule 1 to this Determination inserts new provisions that replace those in Instrument No. 1.

## **Statement of Compatibility with Human Rights**

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

### **Coronavirus Economic Response Package Omnibus Act 2020 Social Security (Coronavirus Economic Response – 2020 Measures No. 7) 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 *Coronavirus Economic Response Package Omnibus Act 2020* (the Act) amended the *Social Security Act 1991* (Social Security Act) to provide additional financial assistance to Australians financially impacted by the Coronavirus (COVID-19 supplement).

Item 40A of Schedule 11 to the Act allows the Minister to make an instrument modifying the operation of the social security law relating to qualification for, or the rate of, a social security payment. 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 and cannot operate after 31 December 2020.

The Social Security (Coronavirus Economic Response – 2020 Measures No. 7) Determination 2020 (this Determination) varies the Social Security Act to remove the liquid assets test waiting period and seasonal work preclusion period for social security claimants who had already served a part of such period prior to 25 March 2020 and claimants who claim during the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act.

This Determination also clarifies that the ordinary waiting period (OWP) stopped applying immediately prior to the commencement of Schedule 11 and will resume after the end of the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act. The newly arrived resident's waiting period (NARWP) is suspended as of 25 March 2020 and the requirement to serve any remainder of that waiting period will start again after the end of the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act for both new claimants and existing claimants who had not completed serving their waiting period prior to 25 March 2020 (the period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act will count towards serving the waiting period).

The period covered by subsections 504(2), 557(2) and 646(2) of the Social Security Act is a period of six months beginning on the day on which Schedule 11 commences (March 2020), but the period may be extended by the Minister.

This Determination clarifies the operation of the waiting period provisions and further expands and expedites access to payments for Australians who are financially impacted by COVID-19.

### **Human rights implications**

This Determination engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

This Determination is entirely beneficial nature as it exempts certain waiting and preclusion periods and clarifies the operation of other waiting periods so that eligible welfare recipients are able to receive their financial assistance sooner. This Determination does not adversely affect the rights of any person.

### **Conclusion**

This Determination is compatible with human rights as it supports a person's right to social security.

**Minister for Families and Social Services, Senator the Hon Anne Ruston**