

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. 12)
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 and has no operation after 31 December 2020.

The Minister made the *Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020* (the No. 5 Determination) under Item 28 of Schedule 2 to the Act on 28 April 2020. The No. 5 Determination modified section 204A of the Administration Act to authorise the provision of JobKeeper 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 No.5 Determination also modified section 204A of the Administration Act to allow the Secretary to use information provided by the Commissioner under section 204A 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 No. 5 Determination also modified section 204A to 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.

Purpose

The Social Security (Coronavirus Economic Response—2020 Measures No. 12) Determination 2020 (this Determination) amends the No. 5 Determination to determine additional modifications to section 204A of the Administration Act.

The amendments made by this Determination provide for additional purposes for which the Secretary can use JobKeeper information provided to the Secretary by the Commissioner under section 204A of the Administration Act.

This Determination authorises the Secretary to use JobKeeper information for the following additional purposes:

- to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular person;
- in connection with a disclosure to the Australian Taxation Office (ATO) for the purposes of the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* or rules made under that Act;
- research into matters of relevance to a Department that is administering any part of the social security law;
- statistical analysis of matters of relevance to a Department that is administering any part of the social security law;
- policy development; and
- to evaluate and plan for the delivery of services under the social security law, family assistance law, ABSTUDY Scheme and *Paid Parental Leave Act 2010*.

This Determination also facilitates the publication of aggregate information in a manner that does not disclose information about any individual and permits the disclosure of JobKeeper information associated with protected information under social security law to the ATO.

This Determination is made in response to circumstances relating to the Coronavirus known as COVID-19. It is critical to the integrity of both the JobKeeper Scheme (introduced as a result of the economic impacts of the pandemic) and the social security law, family assistance law, the ABSTUDY Scheme and *Paid Parental Leave Act 2010*, that JobKeeper information provided by the Commissioner can be used to assist Government decision-making. It is therefore necessary that the Secretary can use this information for the purposes detailed above.

This Determination has no operation after 31 December 2020.

Commencement

This Determination commences the day after it is registered on the Federal Register of Legislation.

Consultation

It was not considered necessary to undertake public consultation on this Determination. This Determination only facilitates the public release of aggregate information, not identifying information. This Determination will only authorise the use of identifying information for the purposes of research, statistical analysis, policy development, service delivery, evaluation, planning and in connection with a disclosure to the ATO for the purposes of the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* or rules made under that Act.

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. 12) Determination 2020*.

Section 2

Section 2 provides that this Determination commences the day 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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make a legislative instrument 'shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument'. In making this Determination, which amends the No. 5 Determination, the Minister is relying upon this subsection in conjunction with the instrument-making power in Item 28 of Schedule 2 to the Act.

Section 4

Section 4 provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms. Schedule 1 specifies the No. 5 Determination and provides for amendments to the No. 5 Determination.

Schedule 1 – Amendments

Item 1

Item 1 makes a consequential amendment to Schedule 1 to the No. 5 Determination to insert a new item 1A into Schedule 1 to the No. 5 Determination (before item 1 of that schedule).

New subitem 1A(1) contains a temporary modification to section 202 of the Administration Act, inserting a new subsection 202(2CA) to authorise the disclosure of protected information to a taxation officer for the purposes of the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* or rules made under that Act. New item 1A(2) then inserts a definition of 'taxation officer' into subsection 202(2D) for the purposes of new subsection 202(2CA).

The effect of this modification is to permit the disclosure of JobKeeper information associated with protected information under social security law to the ATO.

Item 2

Item 2 makes a consequential amendment to Schedule 1 to the No. 5 Determination to insert a new subitem 1(1A). This new subitem temporarily modifies subsection 204A(2) of the Administration Act to provide that it is subject to the other provisions of section 204A, including the new subsections inserted into section 204A by item 3 of Schedule 1 to this Determination (discussed further below).

Item 3

Item 3 amends Schedule 1 to the No. 5 Determination to insert a new subitem 1(4). New subitem 1(4) temporarily modifies section 204A of the Administration Act by adding new subsections 204A(3), 204A(4), 204A(5), 204A(6), 204A(7) and 204A(8) at the end of the section.

New subsections 204A(3), 204A(4), 204A(5) and 204A(6) provide for additional uses of information provided to the Secretary under a requirement under subsection 204A(1A).

New subsection 204A(3) provides that information provided to the Secretary about individuals under a requirement made under subsection 204A(1A) may also be used in connection with a disclosure under new subsection 202(2CA) of the Administration Act (discussed above).

Subsection 204A(1A) was inserted into section 204A of the Administration Act by subitem 1(1) of Schedule 1 to the No. 5 Determination. Subsection 204A(1A) provides that the Secretary may require the Commissioner to provide the Secretary with JobKeeper 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 subsection 204A(1A), 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.

New subsection 204A(4) provides that information provided to the Secretary about individuals under a requirement made under subsection 204A(1A) may also be used

(either alone or together with information mentioned in new subsection 204A(6) (discussed below)) to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular individual.

New subsection 204A(5) provides that information provided to the Secretary under a requirement made under subsection 204A(1A) (discussed above) may also be used (either alone or together with information mentioned in new subsection 204A(6) (discussed below)), may be used for the following purposes:

- research into matters of relevance to a Department that is administering any part of the social security law;
- statistical analysis of matters of relevance to a Department that is administering any part of the social security law;
- policy development;
- to evaluate the delivery of services under the social security law (as defined in subsections 23(17) and (18) of the *Social Security Act 1991*), the family assistance law (as defined in subsection 3(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*), the *Paid Parental Leave Act 2010* or the ABSTUDY Scheme;
- to plan for the delivery of services under the social security law, the family assistance law, the *Paid Parental Leave Act 2010* or the ABSTUDY Scheme.

New subsection 204A(6) sets out the kinds of information that can be used in combination with information provided by the Commissioner under subsection 204A(1A) to produce aggregate information under new subsection 204A(4) (discussed above). It also sets out the kinds of information that can be used in combination with information provided by the Commissioner under subsection 204A(1A) to undertake the various uses identified in new subsection 204A(5) (discussed above).

This information is information about individuals that is:

- 'protected information' within the meaning of the *Social Security Act 1991* (see subsection 23(1) of that Act); or
- 'protected information' within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999* (see subsection 3(1) of that Act); or
- 'protected information' within the meaning of the *Paid Parental Leave Act 2010* (see subsection 6(1) of that Act); or
- 'protected information' within the meaning of the *Student Assistance Act 1973* (see subsection 3(1) of that Act).

New subsections 204A(7) and 204A(8) provide for the use and disclosure of aggregated information.

New subsection 204A(7) provides that information in an aggregated form referred to in new subsection 204A(4) (discussed above) may be used for the purposes referred to in new subsection 204A(5) (discussed above).

New subsection 204A(8) provides that information in an aggregated form referred to in new subsection 204A(4) (discussed above) may be:

- disclosed to one or more persons or bodies; or
- made publicly available.

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. 12) 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

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 and has no operation after 31 December 2020.

The Social Security (Coronavirus Economic Response—2020 Measures No. 12) Determination 2020 (this Determination) amends the *Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020* (the No. 5 Determination), made by the Minister on 28 April 2020, to determine additional modifications to section 204A of the Administration Act.

The amendments made by this Determination provide for additional purposes for which the Secretary of the Department of Social Services (the Secretary) can use JobKeeper information provided by the Commissioner of Taxation (the Commissioner) under section 204A of the Administration Act.

This Determination authorises the Secretary to use JobKeeper information for the following additional purposes:

- to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular person;
- in connection with a disclosure to the Australian Taxation Office (ATO) for the purposes of the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* or rules made under that Act;

- research into matters of relevance to a Department that is administering any part of the social security law;
- statistical analysis of matters of relevance to a Department that is administering any part of the social security law;
- policy development;
- to evaluate and plan for the delivery of services under the social security law, family assistance law, ABSTUDY Scheme and *Paid Parental Leave Act 2010*.

This Determination also facilitates the publication of aggregate information in a manner that does not disclose information about any individual and permits the disclosure of JobKeeper information associated with protected information under social security law to the ATO.

Human rights implications

This 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 202 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 use protected information under the social security law.

This Determination modifies section 202 of the Administration Act to authorise the disclosure of social security protected information to the ATO for the purposes of the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* or rules made under that Act. The ability to use information for this purpose is critical to the integrity of the JobKeeper Scheme.

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 use of JobKeeper information.

JobKeeper information about individuals can be used to prepare aggregate information (both alone or together with other protected information held by the Secretary about individuals). JobKeeper information (both alone or together with other protected information held by the Secretary about individuals) can also be used to undertake research, statistical analysis and policy development work and to evaluate and update service delivery processes. It can also be used in connection with a disclosure of social security protected information to the ATO for the purposes of the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* or rules made under that Act.

The ability to use information for these purposes is critical to the integrity of the JobKeeper Scheme, the social security law, family assistance law, the ABSTUDY Scheme and the *Paid Parental Leave Act 2010*. The use of JobKeeper information for these purposes will ensure there is an evidence base to inform future Government decision-making in relation to both the JobKeeper Scheme and these other payment schemes.

The modifications to section 204A made by this Determination ensure that information may only be used or disclosed for particular purposes (set out in new subsections 204A(3), 204A(4), 204A(5), 204A(7) and 204A(8) of the Administration Act). The modified section 204A does not provide the Secretary with a general power to collect, use and disclose information about people for any purpose. Under new subsection 204A(8), information may only be publicly released if it is in aggregate form and does not include any identifying information about an individual.

Further, the *Privacy Act 1988* continues to apply to the collection, use and disclosure of information that contains personal information (as defined in section 6 of that Act). Information obtained under the modified section 204A is also subject to confidentiality 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). Similar sanctions apply for the unauthorised use or disclosure of information under the family assistance law, *Student Assistance Act 1973* and *Paid Parental Leave Act 2010*.

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.

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.

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