

EXPLANATORY STATEMENT

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

Coronavirus Economic Response Package Omnibus Act 2020

Social Security Act 1991

Social Security (Coronavirus Economic Response – 2020 Measures No. 14)
Determination 2020

Background

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

Item 40A of Schedule 11 to the Omnibus Act allows the Minister for Families and Social Services to make a determination modifying the operation of the social security law relating to the 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 subject to disallowance.

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

A determination made under Item 40A of Schedule 11 to the Omnibus Act has no operation after 31 December 2020.

Schedule 11 to the Omnibus Act also amended the Social Security Act to provide for the payment of the COVID-19 supplement to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance (Other)¹ and Sickness Allowance² at a rate of \$550 per fortnight. The COVID-19 supplement is payable for an initial period ending on 24 September 2020. The Minister has the power to extend this period by a period not exceeding three months and to pay the supplement at a rate determined in a legislative instrument.³

¹ Youth Allowance (Other) refers to a recipient of Youth Allowance that is not undertaking full-time study and is not a new apprentice. Payment of the COVID-19 supplement was extended to all recipients of Youth Allowance by the Social Security (Coronavirus Economic Response—2020 Measures No. 1) Determination 2020.

² Sickness Allowance closed to all new entrants on 20 March 2020 and ceases entirely on 20 September 2020 (see Schedule 5 to the *Social Services Legislation Amendment (Welfare Reform) Act 2018*).

³ See subsections 504(3), 504(7), 557(3), 557(7), 646(3) and 646(7) of the Social Security Act. No equivalent provisions exist for Sickness Allowance due to the cessation of this payment from 20 September 2020.

Schedule 11 to the Omnibus Act also amended the Social Security Act to insert new section 1210B. This section provides that the Minister may make a legislative instrument determining other social security payment recipients that can be paid the COVID-19 supplement and the rate of payment and period in respect of which it can be paid. The Minister made legislative instruments determining Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance as payments in respect of which the supplement can be paid.⁴ For recipients of Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance, the supplement has also been paid at a rate of \$550 per fortnight. The supplement will be paid at this rate for a period ending on 24 September 2020.

Purpose

COVID-19 supplement

The Social Security (Coronavirus Economic Response – 2020 Measures No. 14) Determination 2020 (this Determination) extends the period in respect of which the COVID-19 supplement will be paid to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance.

The initial period for which the supplement was payable will end on 24 September 2020. This Determination will extend the period for which the supplement is payable from 25 September 2020 until 18 December 2020. The supplement will be paid at the rate of \$250 per fortnight. For social security instalment periods that begin before 25 September 2020, the fortnightly amount of the supplement will still be \$550 but for social security instalment periods that begin on or after 25 September 2020 the supplement will be paid at the rate of \$250 per fortnight.

A further legislative instrument will be made this year to extend payment of the COVID-19 supplement from 19 December 2020 until 31 December 2020.

Reinstatement of the assets test

This Determination will reinstate the assets tests for JobSeeker Payment, Parenting Payment, Youth Allowance and Austudy Payment. The assets test for these payments does not apply during the ending on 24 September 2020 and will apply from 25 September 2020 for all recipients and claims made on and after that date.

Reinstatement of the liquid assets test waiting period

Further, this Determination will reinstate the liquid assets test waiting period for JobSeeker Payment, Youth Allowance and Austudy Payment. This waiting period does not apply during the period ending on 24 September 2020 and will apply for any claims made on or after 25 September 2020.

⁴ See the Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020 and Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020.

Temporary increase to income free areas and taper rate changes

This Determination will also temporarily increase the income free area to \$300 a fortnight for JobSeeker Payment recipients (except recipients who are both not a member of a couple and who are the principal carer of a child) and Youth Allowance (Other) recipients. This will mean that eligible recipients can earn \$300 before their income starts to reduce their rate of payment. This Determination will also introduce a single taper rate of 60 cents for these recipients. This will mean that 60 cents in every dollar earned over \$300 will reduce the person's rate of payment.

Temporary increase to partner income taper rate for JobSeeker Payment

This Determination will increase the partner income taper rate for JobSeeker Payment recipients from 25 cents for every dollar over the partner income free area to 27 cents for every dollar over the partner income free area. While this represents an increase in the taper rate, because the partner income free area for JobSeeker Payment will increase under this Determination, a person's partner can earn more income before the income starts to affect the person's rate of payment.

Extension of measures in the No. 10 Determination

This Determination will also extend other measures put in place by the Social Security (Coronavirus Economic Response—2020 Measures No. 10) Determination 2020 (the No. 10 Determination) to assist social security payment recipients impacted by COVID-19.

Mobility Allowance

The No. 10 Determination temporarily modified the Social Security Act to extend the continuation period allowed for Mobility Allowance recipients who are unable to satisfy the qualification requirements for Mobility Allowance due to the COVID-19 pandemic. The extension applied to people who qualify for either Mobility Allowance rate under subsections 1044(1) or 1044(1A) of the Social Security Act.

Ordinarily, where a Mobility Allowance recipient is unable to undertake, or has reduced hours of, gainful employment, vocational training, voluntary work, or a combination of these, a recipient would continue to be qualified for the allowance for an additional 12 weeks after the day on which they would otherwise have lost qualification for the allowance. A 12 week extension is also available to certain Mobility Allowance recipients who cease to receive Jobseeker Payment, Youth Allowance or Austudy Payment or who stop undertaking job search activities or cease participation in vocational rehabilitation programs outlined in section 1046 of the Social Security Act.

The No. 10 Determination extended the 12 week period for a further six weeks resulting in an up to 18 week period in which a person can continue to receive Mobility Allowance. If this extended six week period would result in the person remaining qualified for Mobility Allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. This Determination extends this to 31 December 2020. An extension will still only be available if the Secretary is satisfied that an extension is required because of the impact of the Coronavirus known as COVID-19.

Ordinarily, where a Mobility Allowance recipient is unable to satisfy the travel requirements, a recipient would continue to be qualified for Mobility Allowance for an additional two weeks after the day on which they would otherwise have lost qualification for the allowance. The No. 10 Determination extended the two week period for a further 16 weeks resulting in an up to 18 week period in which a person can continue to receive Mobility Allowance. If this extended 16 week period would result in the person remaining qualified for Mobility Allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. This Determination extends this to 31 December 2020. An extension will still only be available if the Secretary is satisfied that an extension is required because of the impact of the Coronavirus known as COVID-19.

Pension portability

The No. 10 Determination also temporarily modified the Social Security Act to address the impact of travel restrictions or other COVID-19 related circumstances on people who are recipients of Age Pension or Disability Support Pension (for severely disabled persons) and who are unable to return to, or depart from, Australia within 26 weeks.

After this 26-week period, a reduction in rate may ordinarily apply to pensioners who remain overseas as a result of supplements, such as rent assistance, ceasing to be portable and/or receipt of a proportional rate of pension based on their Australian working life residence. Pensioners with beneficial portability arrangements under particular savings provisions who remain in Australia after the 26 week period will cease to be covered by applicable savings provisions, which may result in less beneficial treatment once they do return overseas again.

The No. 10 Determination temporarily modified the Social Security Act to allow the Secretary to determine an alternative period to 26 weeks for:

- pensioners absent from Australia to whom sections 1216 (amounts added to rate) and/or 1220A (proportionality – Age Pension) or 1220B (proportionality – Disability Support Pension rate for a severely disabled person) apply; and
- pensioners in Australia to whom paragraphs 6(3)(d) or (4)(d) or 14(3)(d) or (4)(d) of Schedule 4 to the *Social Services and Other Legislation Amendment Act 2014* (the Amendment Act) apply and/or item 128 of Schedule 1A to the Social Security Act applies.

The circumstances in which a determination may be made are that:

- the 26 week period applicable to the person ends on or after 11 March 2020;
- the Secretary is satisfied that the person is temporarily absent from Australia, or has returned temporarily to Australia (as applicable); and
- the Secretary is satisfied the reason the person is unable to return before the end of 26 weeks is the impact of the Coronavirus known as COVID-19.

The No. 10 Determination limited the Secretary's power to determine an alternative period by providing that any period determined could not end after 24 September 2020.

This Determination extends this 24 September 2020 end date until 31 December 2020.

Suspension provisions for Disability Support Pension

This Determination also amends the Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020 (the No. 11 Determination) to clarify the modification of the *Social Security (Administration) Act 1999* (the Administration Act) made in Schedule 2 of that instrument. That instrument modified the Administration Act to enable the Secretary to suspend rather than cancel a person's Disability Support Pension where the person ceases to be qualified due to the employment income of their partner. This modification was only intended to operate until 31 December 2020, with any suspensions to be reviewed after this time to determine if circumstances have changed and the person's payment can be resumed or not.

This Determination clarifies that any such suspension will only operate until the end of 31 December 2020. Following 31 December 2020, the unmodified law will apply. Should a person who has been suspended under the modified law now be eligible to have their payment resumed, for example where they are no longer disqualified as a result of their partner's employment income, they will have their payment resumed. Otherwise, their payment will be cancelled. The individual is able to seek review of this decision and may apply again should their circumstances change in future.

This Determination is a legislative instrument subject to disallowance.

Commencement

Parts 1 (Preliminary) and 2 (COVID-19 supplement) of this Determination and the amendments regarding the reinstatement of the liquid assets test waiting period from 25 September 2020 (in Part 1 of Schedule 2 to this Determination) commence the day after this Determination is registered on the Federal Register of Legislation.

The other measures in this Determination commence on 25 September 2020.

Consultation

The Department of Social Services consulted with the Department of Veterans' Affairs, the Department of Agriculture, Water and the Environment and Services Australia in developing this Determination.

The majority of the measures contained in this Determination were announced on 21 July 2020 and have been considered in the hearings of the Senate Select Committee on COVID-19.

Public consultation was not undertaken on the amendments to the No. 10 Determination and No. 11 Determination. The amendments to the No. 10 Determination were not previously announced on 21 July 2020 as conditions in both Australia and overseas were still being monitored. These amendments have a beneficial effect on recipients of social security payments. The amendments to the No. 11 Determination are of a minor nature and are designed to ensure that determination operates as intended.

Regulation Impact Statement (RIS)

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

Availability of independent review

Independent merits review and judicial review is available in respect of administrative decisions made under the social security law provisions modified by this Determination.

Explanation of the provisions

Part 1 – Preliminary

Section 1 provides the name of this Determination, the Social Security (Coronavirus Economic Response – 2020 Measures No. 14) Determination 2020.

Section 2 sets out the commencement dates for the provisions in this Determination.

The section sets out these commencement dates in a table.

The table provides that Parts 1 (Preliminary) and 2 (COVID-19 supplement) of this Determination commence on the day after this Determination is registered on the Federal Register of Legislation.

The table then provides that Schedule 1 to this Determination and Part 2 of Schedule 2 to this Determination commence on 25 September 2020.

Part 1 of Schedule 2 to this Determination commences on the day after this Determination is registered on the Federal Register of Legislation. This Part contains the amendments that reinstate the liquid assets test waiting period.

Section 3 provides that this Determination is made under item 40A of Schedule 11 to the Omnibus Act and sections 504, 557, 646 and 1210B of the Social Security Act.

This Determination makes amendments to previous legislative instruments made under item 40A of Schedule 11 to the Omnibus Act and subsection 1210B(2) of the Social Security 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'.

Section 4 provides that each modification of the operation of a provision of a social security law (within the meaning of the Social Security Act) as set out in Schedule 1 to this Determination is determined for the purposes of item 40A of Schedule 11 to the Omnibus Act.

Section 5 provides that each instrument that is specified in Schedule 2 to this Determination is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Part 2 – COVID-19 supplement

Sections 6, 7 and 8 provide for the payment of the COVID-19 supplement to recipients of Parenting Payment, Youth Allowance and JobSeeker Payment for the period 25 September 2020 to 18 December 2020 at the rate of \$250 per fortnight.

These new sections are made for the purposes of subsections 504(3), 504(7), 557(3), 557(7), 646(3) and 646(7) of the Social Security Act.

These sections provide that for social security instalment periods in relation to a person that start on or after 25 September 2020 the rate of the COVID-19 supplement will be \$250 per fortnight.

For instalment periods that begin before 25 September 2020 the rate of the COVID-19 supplement will be \$550 per fortnight. This is a transitional arrangement that ensures a person will be paid the supplement at a rate of \$550 per fortnight for a social security instalment period that starts before 25 September 2020 but includes 25 September 2020. For example, if a person's instalment period starts on 20 September 2020 and ends on 3 October 2020 they will be paid \$550 for that instalment period and then paid \$250 for each subsequent instalment period for which they remain eligible for the supplement.

Arrangements for the continued payment of the supplement to recipients of Austudy Payment, Special Benefit, Widow Allowance and Partner Allowance are addressed in Part 2 of Schedule 2 to this Determination (discussed in further detail below).

Schedule 1 - Modifications of the Social Security Act

Items 1, 2 and 3 modify sections 500Q, 547B and 611 of the Social Security Act which provide for an assets test for Parenting Payment, Youth Allowance and JobSeeker Payment.

These items are made under item 40A of Schedule 11 to the Omnibus Act.

These items provide that subsections 500Q(6), 547B(2) and 611(3) of the Social Security Act do not apply. The effect of these amendments is to reinstate the assets tests for recipients of Parenting Payment, Youth Allowance and JobSeeker Payment from 25 September 2020.

Part 2 of Schedule 2 to this Determination (discussed in further detail below) provides for the reinstatement of the assets test for recipients of Austudy Payment from 25 September 2020.

Items 4, 5, 6, 7 and 8 modify points 1067G-H1, 1067G-H29, 1067G-H31, 1067G-H32 and 1067G-H33 in Module H of the Youth Allowance Rate Calculator in section 1067G of the Social Security Act. A new point 1067G-H34 is also inserted into that module by **Item 9**.

These items are made under item 40A of Schedule 11 to the Omnibus Act and have no operation after 31 December 2020.

Module H of the Youth Allowance Rate Calculator sets out the income test provisions for recipients of Youth Allowance and the provisions concerning the ordinary income free area for recipients of that payment. The ordinary income free area is the amount of ordinary income (as defined in section 8 of the Social Security Act) a person can earn before their rate of payment starts to be reduced. Currently, a recipient of Youth Allowance (Other) can earn \$143 of ordinary income a fortnight before their fortnightly rate of payment starts to be reduced by their ordinary income.

For the period 25 September 2020 to 31 December 2020 (inclusive) this Determination will modify the social security law to allow recipients of Youth Allowance (Other) to earn \$300 before ordinary income starts to affect their rate of payment. For every dollar a person earns in excess of \$300, the person's maximum payment rate⁵ will then be reduced by 60 cents.

Items 10, 11, 12, and 14 modify points 1068-G1, 1068-G12, 1068-G14 and 1068-G17 in Module G of Benefit Rate Calculator B in section 1068 of the Social Security Act. A new point 1068-G16A is also inserted into that module by **Item 13**.

These items are made under item 40A of Schedule 11 to the Omnibus Act and have no operation after 31 December 2020.

Module G of Benefit Rate Calculator B sets out the income test provisions for recipients of JobSeeker Payment, Partner Allowance and Widow Allowance and the provisions concerning the ordinary income free area for recipients of those payments. The ordinary income free area is the amount of ordinary income (as defined in section 8 of the Social Security Act) a person can earn before their rate of payment starts to be reduced. Currently, a recipient of one of these three payments can earn \$106 of ordinary income a fortnight before their fortnightly rate of payment starts to be reduced by their ordinary income.

⁵ A person's maximum payment rate is determined under step 4 of the method statement in point 1067G-A1 in Module A of the Youth Allowance Rate Calculator in section 1067G of the Social Security Act.

This Determination will (for the period 25 September 2020 to 31 December 2020 (inclusive)) increase the ordinary income free area from \$106 to \$300 per fortnight for recipients of JobSeeker Payment meaning they can earn \$300 before ordinary income starts to affect their rate of payment.

Eligible recipients of JobSeeker Payment will be able to earn \$300 before ordinary income starts to affect their rate of payment. For every dollar a person earns in excess of \$300, the person's maximum payment rate⁶ will then be reduced by 60 cents.

This arrangement is not extended to single principal carers as they have a 40 cents rather than a 60 cents taper rate and the income at which payment would cut-out would have reduced:

- from \$1,675.25 to \$1,346.17 for a single principal carer
- from \$2,134.25 to \$1,652.17 for a single principal carer with an exemption from mutual obligation requirements for special family circumstances.

Schedule 2 – Amendments

Part 1 - Amendments commencing the day after the registration of this Determination

Items 1, 2 and 3 amend Items 5, 10 and 14 of Schedule 1 to the Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020 (the No. 7 Determination).

These items are made under item 40A of Schedule 11 to the Omnibus Act.

Items 5, 10 and 14 of Schedule 1 to the No. 7 Determination varied sections 549A, 575A and 598 of the Social Security Act to set out the period in respect of which a liquid assets test waiting periods does not apply for recipients of Youth Allowance, Austudy Payment and JobSeeker Payment.

The amendments made by these items reinstate the liquid assets test waiting periods for these payments from 25 September 2020. The amendments ensure that a person will not be subject to a liquid assets test waiting period if any part of that period occurs during the period starting on 25 March 2020 and ending on 24 September 2020 and the person claimed the relevant payment before 25 September 2020.

For example, if a person claims JobSeeker Payment on 22 September 2020 and a liquid assets test waiting period would have applied to them on that day, if not for the temporary exemption in subsection 598(8C) of the Social Security Act, the person will not be required to serve any liquid assets test waiting period at all in respect of that claim. Even for days on and after 25 September 2020 a liquid assets test waiting period won't need to be served for the 22 September 2020 claim because part of the waiting period for that claim falls between 25 March 2020 and 24 September 2020 and the claim for JobSeeker Payment was made prior to 25 September 2020.

⁶ A person's maximum payment rate is determined under step 4 of the method statement in point 1068-A1 in Benefit Rate Calculator B in section 1068 of the Social Security Act.

Had the claim been lodged on or after 25 September 2020 then the person would be required to serve a liquid assets test waiting period (unless they are otherwise exempt or have already self-served the waiting period) as determined under section 598 of the Social Security Act (as the claim was for JobSeeker Payment).

The liquid assets test waiting period would not apply to a claim lodged on or after 25 September 2020 if the intent to claim provisions in section 13 of the Administration Act result in the claim day being backdated to a day before 25 September 2020.

For early claims made before a person is qualified, clause 4 of Schedule 2 to the Administration Act sets out when the claim is taken to be made. A person who claims a payment before 25 September 2020 but is not qualified for the payment before 25 September 2020 will need to serve a liquid assets test waiting period (unless they are otherwise exempt or have already self-served the waiting period). For example, a person who claims Austudy Payment on 20 September 2020 but does not qualify for the payment until 1 October 2020 will not be exempt from the liquid assets test waiting period. This is because clause 4 of Schedule 2 to the Administration Act provides that the person's claim is taken to be made on the first day on which the person is qualified for the social security payment (in this case, 1 October 2020) and this date occurs after 24 September 2020.

Part 2 - Amendments commencing 25 September 2020

Item 4 repeals Item 8 of Schedule 1 to the Social Security (Coronavirus Economic Response—2020 Measures No. 1) Determination 2020.

This item is made under item 40A of Schedule 11 to the Omnibus Act.

The effect of this amendment is to ensure that the assets test for Austudy Payment is reinstated from 25 September 2020.

Items 5 and 6 repeal and substitute new paragraphs 7(2)(a) and (b) and repeal and substitute a new subsection 7(3) of the Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020 (the No. 2 Determination).

These items are made under subsection 1210B(2) of the Social Security Act.

The effect of these amendments is to ensure that the COVID-19 supplement continues to be paid to a recipient of Austudy Payment for the period beginning on 25 September 2020 and ending on 18 December 2020 at the rate of \$250 a fortnight.

New subsection 7(3) of the No. 2 Determination provides that for social security instalment periods in relation to a recipient of Austudy Payment that start on or after 25 September 2020 the rate of the COVID-19 supplement will be \$250 per fortnight.

For instalment periods that begin before 25 September 2020 the rate of the COVID-19 supplement will be \$550 per fortnight. This is a transitional arrangement that ensures a person will be paid the supplement at a rate of \$550 per fortnight for a social security instalment period that starts before 25 September 2020 but includes 25 September 2020. For example, if a person's instalment period starts on 20 September 2020 and ends on 3 October 2020 they will be paid \$550 for that

instalment period and then paid \$250 for each subsequent instalment period for which they remain eligible for the supplement.

Item 7 amends Item 1 of Schedule 1 to the Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020 (the No. 4 Determination).

This item is made under item 40A of Schedule 11 to the Omnibus Act and has no operation after 31 December 2020.

The effect of this amendment is to vary point 1068-G11 of the Social Security Act by replacing the current paragraph 1068-G11(b) (inserted by Item 1 of Schedule 1 to the No. 4 Determination) with a new paragraph 1068-G11(b).

The effect of the new paragraph 1068-G11(b) is that if a JobSeeker Payment recipient has a partner income excess, the person's partner income reduction (the amount by which ordinary income earned by the person's partner reduces their rate of payment) is an amount equal to 27 per cent of the person's partner income excess. The partner income excess is the amount of income a partner of a JobSeeker Payment recipient earns that exceeds the partner income free area for JobSeeker Payment.

Under the new paragraph 1068-G11(b), for every dollar the partner of a JobSeeker Payment recipient earns in excess of the partner income free area, 27 cents will be taken off the person's rate of JobSeeker Payment. This modification to the social security law applies for the period beginning on 25 September 2020 and ending on 31 December 2020.

Items 8 and 9 repeal and substitute new paragraphs 4(2)(a) and (b) and repeal and substitute a new subsection 4(3) of the Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020 (the No. 6 Determination).

These items are made under subsection 1210B(2) of the Social Security Act.

The effect of these amendments is to ensure that the COVID-19 supplement continues to be paid to a recipient of Special Benefit, Widow Allowance or Partner Allowance for the period beginning on 25 September 2020 and ending on 18 December 2020 at the rate of \$250 a fortnight.

New subsection 4(3) of the No. 6 Determination provides that, for social security instalment periods in relation to a recipient of Special Benefit, Widow Allowance or Partner Allowance that start on or after 25 September 2020, the rate of the COVID-19 supplement will be \$250 per fortnight.

For instalment periods that begin before 25 September 2020 the rate of the COVID-19 supplement will be \$550 per fortnight. This is a transitional arrangement that ensures a person will be paid the supplement at a rate of \$550 per fortnight for a social security instalment period that starts before 25 September 2020 but includes 25 September 2020. For example, if a person's instalment period starts on 20 September 2020 and ends on 3 October 2020 they will be paid \$550 for that instalment period and then paid \$250 for each subsequent instalment period for which they remain eligible for the supplement.

Item 10 amends Schedule 1 to the Social Security (Coronavirus Economic Response—2020 Measures No. 10) Determination 2020 (the No. 10 Determination).

This item is made under item 40A of Schedule 11 to the Omnibus Act and has no operation after 31 December 2020.

This item amends items 4 to 9 of the No. 10 Determination to replace references to ‘24 September 2020’ with references to ‘31 December 2020’.

Item 4 of the No. 10 Determination temporarily modified the Social Security Act to provide for an extended period for which a person can remain qualified for Mobility Allowance. This extended qualification period could not be extended until any later than 24 September 2020 (see further discussion of these amendments above in the Purpose section of this Explanatory Statement). This amendment will allow for a person’s Mobility Allowance qualification period to be extended until 31 December 2020 (subject to meeting other requirements in section 1046 of the Social Security Act as modified by the No. 10 Determination).

Items 5 to 9 of the No. 10 Determination temporarily modified the Social Security Act to address the impact of travel restrictions or other COVID-19 related circumstances on people who are recipients of Age Pension or Disability Support Pension (for severely disabled persons) and who are unable to return to, or depart from, Australia within 26 weeks. This amendment will allow eligible recipients to have the benefit of the amendments made by the No. 10 Determination (see further discussion of these amendments above in the Purpose section of this Explanatory Statement) until 31 December 2020 instead of 24 September 2020.

Items 11, 12 and 13 amend Schedule 2 to the Social Security (Coronavirus Economic Response—2020 Measures No. 11) Determination 2020 (the No. 11 Determination) to clarify the modification of the Administration Act made by the No. 11 Determination.

These items are made under item 40A of Schedule 11 to the Omnibus Act and have no operation after 31 December 2020.

The No. 11 Determination modified the Administration Act to enable the Secretary to suspend rather than cancel a person’s Disability Support Pension where the person ceases to be qualified due to the employment income of their partner. This modification was only intended to operate until 31 December 2020, with any suspensions to be reviewed after this time.

This Determination clarifies this by stating explicitly in the modification made by the No. 11 Determination that any such suspension will only operate until the end of 31 December 2020.

Items 11 and 13 make minor technical amendments. Specifically, subitem 1(1) of Schedule 2 is amended to repeal ‘(1)’ and subitems 1(2) and (3) are repealed, as they are no longer necessary.

Item 12 amends subitem 1(1) to insert the text “until the end of 31 December 2020” at the end of paragraph (2A)(d). This clarifies that any suspension of a person’s

Disability Support Pension will cease at the end of 31 December 2020, as was always the intention. Following 31 December 2020, the unmodified law will again apply and a person who had had their DSP suspended under these provisions will have their eligibility reviewed.

Where the person is no longer not payable as a result of their partner's employment income, they will have their payment resumed. If the person continues to not be payable, their payment will be cancelled. The individual is able to seek review of this decision and may apply for DSP again should their circumstances change in future.

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. 14) 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

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

Item 40A of Schedule 11 to the Omnibus Act allows the Minister for Families and Social Services to make a determination modifying the operation of the social security law relating to the 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 subject to disallowance.

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

A determination made under Item 40A of Schedule 11 to the Omnibus Act has no operation after 31 December 2020.

Schedule 11 to the Omnibus Act also amended the Social Security Act to provide for the payment of the COVID-19 supplement to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance (Other)¹ and Sickness Allowance² at a rate of \$550 per fortnight. The supplement is payable for an initial period ending on 24 September 2020. The Minister has the power to extend this period by a period not exceeding 3 months and to pay the supplement at a rate determined in a legislative instrument³.

¹ Youth Allowance (Other) refers to a recipient of Youth Allowance that is not undertaking full-time study and is not a new apprentice. Payment of the COVID-19 supplement was extended to all recipients of Youth Allowance by the *Social Security (Coronavirus Economic Response—2020 Measures No. 1) Determination 2020*.

² Sickness Allowance closed to all new entrants on 20 March 2020 and ceases entirely on 20 September 2020 (see Schedule 5 to the *Social Services Legislation Amendment (Welfare Reform) Act 2018*).

³ See subsections 504(3), 504(7), 557(3), 557(7), 646(3) and 646(7) of the Social Security Act. No equivalent provisions exist for Sickness Allowance due to the cessation of this payment from 20 September 2020.

Schedule 11 to the Omnibus Act also amended the Social Security Act to insert new section 1210B. This section provides that the Minister may make a legislative instrument determining other social security payment recipients that can be paid the COVID-19 supplement and the rate of payment and period in respect of which it can be paid. The Minister made legislative instruments determining Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance as payments in respect of which the supplement can be paid.⁴ For recipients of Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance, the supplement has also been paid at a rate of \$550 per fortnight. The supplement will be paid at this rate for a period ending on 24 September 2020.

The Social Security (Coronavirus Economic Response – 2020 Measures No. 14) Determination 2020 (this Determination) extends the period in respect of which the supplement will be paid to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance.

The initial period for which the supplement was payable will end after 24 September 2020. This Determination will extend the period until 18 December 2020. The supplement will be paid at the rate of \$250 per fortnight. For social security instalment periods that begin before 25 September 2020 the amount of the supplement will still be \$550 but for social security instalment periods that begin on or after 25 September 2020 the supplement will be paid at the rate of \$250 per fortnight.

This Determination will reinstate the assets tests for JobSeeker Payment, Parenting Payment, Youth Allowance and Austudy Payment. The assets test for these payments does not apply for the period ending on 24 September 2020 and will re-apply from 25 September 2020.

Further, this Determination will reinstate the liquid assets test waiting period for JobSeeker Payment, Youth Allowance and Austudy Payment. The waiting period does not apply for the period ending on 24 September 2020 and will re-apply from 25 September 2020.

This Determination will temporarily increase the income free area to \$300 a fortnight for JobSeeker Payment recipients (except recipients that are both not a member of a couple and the principal carer of a child) and Youth Allowance (Other) recipients. It will also introduce a single taper rate of 60 cent. This will mean that a recipient can earn \$300 before their income starts to reduce their rate of payment.

⁴ See the *Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020* and *Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020*.

This Determination will increase the partner income taper rate for JobSeeker Payment recipients from 25 cents for every dollar over the partner income free area to 27 cents for every dollar over the partner income free area. While this represents an increase in the taper rate, because the partner income free area for JobSeeker will increase under this Determination, this increase in the taper rate won't result in a reduction in the amount of income a JobSeeker Payment recipient's partner can earn before it affects the recipient's rate of payment.

The Determination also amends the Social Security (Coronavirus Economic Response – 2020 Measures No. 10) Determination 2020 (the No. 10 Determination) to extend other measures put in place by the No. 10 Determination to ensure that social security payment recipients impacted by COVID-19 can continue to be supported.

The No. 10 Determination extended the continuation period allowed for mobility allowance recipients who are unable to satisfy the qualification requirements for mobility allowance due to the COVID-19 pandemic. Under the No. 10 Determination, if this extended continuation period would result in the person remaining qualified for Mobility Allowance after 24 September 2020, the person would only remain qualified until 24 September 2020. This Determination extends this to 31 December 2020.

The No. 10 Determination also addressed the impact of travel restrictions or other COVID-19 related circumstances on recipients of Age Pension or Disability Support Pension (for severely disabled persons) and who are unable to depart, or return to, Australia within 26 weeks. After this period, a reduction in rate may ordinarily apply or beneficial treatment under certain savings provisions may be lost.

The No. 10 Determination allows the Secretary to determine an alternative period to 26 weeks to assist pensioners who would have returned to or departed Australia within a period of 26 weeks if not for the impact of COVID-19. Under the No. 10 Determination, any alternative period determined by the Secretary must not end after 24 September 2020. This Determination extends this to 31 December 2020.

This Determination also amends the Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020 to clarify the modification of the *Social Security (Administration) Act 1999* (the Administration Act) in Schedule 2 of that instrument. That instrument modified the Administration Act to enable the Secretary to suspend, rather than cancel, a person's Disability Support Pension where the person ceases to be qualified due to the employment income of their partner. This modification was only intended to operate until 31 December 2020, with any suspensions to be reviewed after this time. This Determination clarifies the operation of this modification of the Administration Act.

Human rights implications

The 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

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 ensuring continuing access to the COVID-19 supplement and increasing the ability of recipients of Youth Allowance (Other) and JobSeeker Payment recipients (and their partner) to earn more income before it impacts their rate of payment. This is also achieved by ensuring that person who otherwise becomes ineligible for Disability Support Pension due to the impact of stimulus measures on their partner's income, will not have to reapply to have their payment recommence should circumstances change.

This Determination also extends access to the Mobility Allowance and pension portability extension periods introduced by the Social Security (Coronavirus Economic Response—2020 Measures No. 10) Determination 2020. The pursuit of this objective promotes the right to social security by ensuring continued access to social security entitlements for eligible recipients and also promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

The reinstatement of the liquid assets test waiting period and assets test from 25 September 2020 will see the reintroduction of means testing arrangements that previously formed part of the social security law. These measures ensure social security entitlements are targeted to those who lack the means to support themselves financially. Under the Omnibus Act, the liquid assets test waiting period and assets test were dis-applied for a period ending on 24 September 2020. This was a temporary measure and the provisions that will apply from 25 September 2020 will be the same as those that applied before the Omnibus Act commenced.

Conclusion

The Determination is compatible with human rights because it advances the protection of human rights. To the extent that it limits human rights, those limitations are reasonable, necessary and proportionate.

Anne Ruston, Minister for Families and Social Services