

EXPLANATORY STATEMENT

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

Social Security Act 1991

Social Security (Coronavirus Economic Response – 2020 Measures No. 16)
Determination 2020

Background

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

Payment of the COVID-19 supplement to recipients of JobSeeker Payment, Parenting Payment and Youth Allowance

Schedule 11 to the Omnibus Act amended the Act to provide for the payment of the COVID-19 supplement to recipients of JobSeeker Payment¹, Parenting Payment², Youth Allowance (Other)³ and Sickness Allowance⁴ for an initial period that ended on 24 September 2020.⁵ The period for which the COVID-19 supplement is payable to recipients of JobSeeker Payment, Parenting Payment and Youth Allowance has since been extended, by legislative instruments, to 31 December 2020.

Payment of the COVID-19 supplement to recipients of Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance

Schedule 11 to the Omnibus Act also amended the Act to insert new section 1210B. This section provides that the Minister for Families and Social Services (the Minister) may make a legislative instrument determining other social security payment recipients to be paid the COVID-19 supplement, as well as the rate of payment and the period in respect of which it is paid. The Minister made legislative instruments determining Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance as payments in respect of which the COVID-19 supplement is paid. The period for which the COVID-19 supplement is payable to recipients of these

¹ See section 646 of the Act.

² See section 504 of the Act.

³ See section 557 of the Act. 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.

⁴ See former section 710 of the Act. Sickness Allowance closed to all new entrants on 20 March 2020 and ceased entirely on 20 September 2020 (see Schedule 5 to the *Social Services Legislation Amendment (Welfare Reform) Act 2018*). Section 710 was repealed from the Act.

⁵ For recipients of payments other than Sickness Allowance (as this payment was no longer payable from 20 September 2020).

payments has also been extended, by legislative instruments, until 31 December 2020.

For the period 25 March 2020 until 24 September 2020, the COVID-19 supplement was paid at a rate of \$550 per fortnight. The Social Security (Coronavirus Economic Response – 2020 Measures No. 14) Determination 2020 (the No. 14 Determination) then extended the period for which the supplement was payable from 25 September 2020 until 18 December 2020 at a rate of \$250 per fortnight.

The Social Security (Coronavirus Economic Response – 2020 Measures No. 15) Determination 2020 (the No. 15 Determination) provided for the payment of the COVID-19 supplement to recipients of these payments for the period 19 December 2020 to 31 December 2020, at a rate of \$250 per fortnight.

The No. 15 Determination did this by making amendments to:

- the Social Security (Coronavirus Economic Response – 2020 Measures No. 2) Determination 2020 (the No. 2 Determination) (for Austudy Payment); and
- the Social Security (Coronavirus Economic Response – 2020 Measures No. 6) Determination 2020 (the No. 6 Determination) (for Special Benefit, Partner Allowance and Widow Allowance).

The Minister's power to modify provisions of the social security law from 1 January 2021

The *Social Services and Other Legislation Amendment (Extension of Coronavirus Support) Act 2020* (the Extension of Coronavirus Support Act) inserts section 1262 into the Act (section 1262) with effect from 1 January 2021. This section provides the Minister with the power to determine, by disallowable legislative instrument, temporary modifications of certain provisions of the social security law in response to circumstances relating to COVID-19.

Generally, a determination under subsection 1262(1) must end at the end of 31 March 2021. A determination that relates to modifications to subsections 23(4A) or (4AA) of the Act (regarding the employment income nil rate period) must end at the end of 16 April 2021.

Purpose

Schedule 1

Extension of the COVID-19 supplement period through to 31 March 2021

Schedule 1 to the Social Security (Coronavirus Economic Response – 2020 Measures No. 16) Determination (this Determination) ensures the continued payment of the COVID-19 supplement through to the end of March 2021 for recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance. The COVID-19 supplement will be paid to recipients of these payments at a rate of \$150 a fortnight

for social security instalment periods that begin on a day during the period 1 January 2021 to 31 March 2021 (both dates inclusive).

The extension of the period for which the COVID-19 supplement is payable to recipients of JobSeeker Payment and Youth Allowance will also result in an extension of the period for which the special COVID-19 qualification categories for these payments will apply. A person will be able to qualify for Youth Allowance (under section 540BA of the Act) and JobSeeker Payment (under subsection 593(5) of the Act) until 31 March 2021.

Temporary COVID-19 measures extended under section 1262 of the Act

Schedule 1 to this Determination will also extend various measures currently in place under legislative instruments made under the Minister's instrument making power in item 40A of Schedule 11 to the Omnibus Act (item 40A). Item 40A is repealed on 31 December 2020 and instruments made under item 40A have no effect after 31 December 2020.

From 1 January 2021, the Minister has a new power under section 1262 to make a disallowable legislative instrument to temporarily modify certain specified provisions of the social security law.

Schedule 1 to this Determination will extend (until 31 March 2021) the following temporary modifications to the Act previously made under item 40A:

- the waiver of the:
 - o ordinary waiting period (for Parenting Payment, JobSeeker Payment and Youth Allowance (Other));
 - o newly arrived resident's waiting period (for Parenting Payment, JobSeeker Payment, Austudy Payment, Special Benefit and Youth Allowance); and
 - o seasonal work preclusion period (for Parenting Payment, JobSeeker Payment, Austudy Payment, Special Benefit and Youth Allowance);
- the exemption from the qualifying residence requirement for Parenting Payment;
- the modifications to the Act that clarify the COVID-19 supplement is paid to former recipients of wife pension based on their special transitional rate of JobSeeker Payment;
- the modifications to the Act in relation to the process used to determine when a person is regarded as a 'member of a couple' for the purposes of JobSeeker Payment;
- the \$300 ordinary income free area for recipients of JobSeeker Payment (except single principal carers) and Youth Allowance (Other) with a taper rate of 60 cents for every dollar over the ordinary income free area (the partner income taper rate of 27 cents in the dollar for JobSeeker Payment recipients will also continue until 31 March 2021);

- the modifications to the Act in relation to payment portability arrangements currently in place for age pensioners (and certain recipients of the disability support pension);
- the modifications to the Act that allow the Secretary of the Department of Social Services (the Secretary) to extend the mobility allowance 2-week and 12-week qualification grace periods to 18 weeks.

Schedule 1 to this Determination will also extend (until 16 April 2021) the period for which a person is taken to receive a social security pension or benefit at nil rate (resulting in continued access to benefits such as concession cards).

Schedule 2

Schedule 2 to this Determination also amends the No. 2 Determination and No. 6 Determination to clarify that the COVID-19 Supplement is paid to recipients of Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance at a rate of \$250 per fortnight for social security instalment periods that begin on a day during the period 25 September 2020 to 31 December 2020 (inclusive).

Schedule 2 to this Determination is intended to remove any doubt about the application of the COVID-19 supplement for recipients of these payments in the period up to 31 December 2020 by amending the No. 2 Determination and the No. 6 Determination so they describe the entire period for which the COVID-19 supplement applies to recipients of these payments at the \$250 per fortnight rate.

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 the amendments in Schedule 2 to this Determination, the Minister is relying upon this subsection in conjunction with section 1210B of the Act.

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

This Determination is a legislative instrument subject to disallowance.

Commencement

Part 1 and Schedule 2 to this Determination commence the day after this Determination is registered on the Federal Register of Legislation.

Part 2 and Schedule 1 to this Determination commence on 1 January 2021.

Section 4 of the *Acts Interpretation Act 1901* allows the Minister to make this Determination after the Extension of Coronavirus Support Act has received the Royal Assent but before the item inserting section 1262 commences (the new section 1262 commences on 1 January 2021).

Consultation

A draft of Part 2 and Schedule 1 to this Determination was provided to the Senate Community Affairs Legislation Committee as part of the submission made by the Department of Social Services (the Department) to the Committee's inquiry in relation to the Social Services and Other Legislation Amendment (Extension of Coronavirus Support) Bill 2020.

Due to the beneficial and temporary nature of Part 2 and Schedule 1, and the fact they extend existing temporary arrangements, no further consultation was undertaken on these provisions. In relation to Part 2, the Government announced the decision to pay the COVID-19 supplement at the rate of \$150 per fortnight on 10 November 2020 and has received and considered correspondence on this announcement since that date. The Department continues to closely monitor incoming correspondence from members of the public including income support recipients and feedback from Services Australia and other stakeholders as temporary measures are rolled out, to support income support recipients and as Australia transitions to a post-COVID economy.

Schedule 2 to this Determination has not been the subject of consultation as the amendments made by this schedule clarify existing arrangements.

Regulation Impact Statement

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 under Part 4 and Part 4A of the *Social Security (Administration) Act 1999* is available in respect of all administrative decisions made under the social security law provisions that are temporarily modified by this Determination.

Explanation of the provisions

Part 1 – Preliminary

Section 1

Section 1 provides the name of this Determination, the Social Security (Coronavirus Economic Response – 2020 Measures No. 16) Determination 2020.

Section 2

Section 2 sets out the commencement of provisions in this Determination.

Part 1 and Schedule 2 to this Determination commence the day after this Determination is registered on the Federal Register of Legislation.

Part 2 and Schedule 1 to this Determination commence on 1 January 2021.

Section 3

Section 3 provides that this Determination is made under sections 504, 557, 646, 1210B and 1262 of the Act.

Section 4

Subsection 4(1) of this Determination provides that each modification of a provision of the social security law as set out in Schedule 1 to this Determination is determined for the purposes of section 1262 of the Act. Section 1262 enables the Minister to make temporary modifications to specified provisions of social security law by disallowable legislative instrument.

Subsection 4(2) of this Determination provides that, for the purposes of subsection 1262(4) of the Act, this Determination, to the extent it is made under section 1262 of the Act, applies to all persons. Under section 1262(4), a determination by the Minister under section 1262 must be expressed to apply to all persons or to a specified class or classes of persons.

Subsection 4(3) provides that for the purposes of subsection 1263(1) of the Act, this Determination, to the extent it is made under section 1262 of the Act, is in force for the period:

- beginning on 1 January 2021; and
- ending at the end of 31 March 2021 (for the items in Part 1 of Schedule 1 to this Determination) or 16 April 2021 (for the one item in Part 2 of Schedule 1 to this Determination).

Section 5

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 to 9

Sections 6 to 9 of this Determination ensure the COVID-19 supplement will continue to be paid to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Widow Allowance and Partner Allowance for the period 1 January 2021 to 31 March 2021 (inclusive).

The COVID-19 supplement for each of these social security payments will be paid at a rate of \$150 a fortnight for social security instalment periods that begin on a day during the period commencing on 1 January 2021 and ending on 31 March 2021 (inclusive).

The period and amount of the COVID-19 supplement are determined by the Minister under section 504 of the Act (for Parenting Payment), section 557 of the Act (for Youth Allowance), section 646 of the Act (for JobSeeker Payment) and section 1210B of the Act (for Austudy Payment, Special Benefit, Widow Allowance and Partner Allowance).

Because of the operation of Part 5 of the *Farm Household Support Act 2014*, Part 2 of this Determination will also extend the COVID-19 supplement to recipients of Farm Household Allowance which is payable under that Act.

Schedule 1 – Modifications of the Social Security Act

Part 1 of Schedule 1 – Modifications ending at the end of 31 March 2021

Item 1

Item 1 provides that paragraph 500(1)(d) and subsections 500(3) and 500(4) of the Act do not apply. These provisions of the Act are dis-applied from 1 January 2021 to 31 March 2021. The effect of this item is to dis-apply the qualifying residence requirement for Parenting Payment. This continues an arrangement that has been in place under the Social Security (Coronavirus Economic Response – 2020 Measures No. 1) Determination 2020 (which was made under item 40A on 25 March 2020).

Items 2 to 5

Items 2 to 5 vary sections 500WA, 500X, 500Y and 500Z of the Act. The effect of these items is to ensure that the ordinary waiting period, newly arrived resident's waiting period and seasonal work preclusion period continue to be waived during the period 1 January 2021 to 31 March 2021 for recipients of Parenting Payment.

Items 6 to 9

Items 6 to 9 vary sections 549CA, 549D, 549E and 553C of the Act. The effect of these items is to ensure that the ordinary waiting period, newly arrived resident's waiting period and seasonal work preclusion period continue to be waived during the period 1 January 2021 to 31 March 2021 for recipients of Youth Allowance.

Items 10 to 12

Items 10 to 12 vary sections 575D, 575E and 575EA of the Act. The effect of these items is to ensure that the newly arrived resident's waiting period and seasonal work preclusion period continue to be waived during the period 1 January 2021 to 31 March 2021 for recipients of Austudy Payment.

Items 13 to 16

Items 13 to 16 vary sections 620, 623A, 623B and 633 of the Act. The effect of these items is to ensure that the ordinary waiting period, newly arrived resident's waiting period and seasonal work preclusion period continue to be waived during the period 1 January 2021 to 31 March 2021 for recipients of JobSeeker Payment.

Item 17

Item 17 varies subsection 654(3) of the Act to clarify the COVID-19 supplement is paid to former recipients of wife pension based on their special transitional rate of JobSeeker Payment. The COVID-19 supplement will continued to be paid to this cohort of JobSeeker Payment recipients (along with all other JobSeeker Payment recipients) until 31 March 2021.

Items 18 and 27

Items 18 and 27 temporarily modify the Act in relation to the process used to determine when a person is regarded as a 'member of a couple' for the purposes of JobSeeker Payment.

Item 18 inserts a temporary section 660N into Part 2.12 of the Act for the period 1 January 2021 to 31 March 2021.

Item 27 amends section 1068 of the Act to insert temporary subsections 1068(2A) and 1068(2B) into the Act.

The Social Security (Coronavirus Economic Response – 2020 Measures No. 8) Determination 2020 (the No. 8 Determination) was made under item 40A. The No. 8 Determination modifies the rules concerning when a person is regarded as a 'member of a couple' for the purposes of JobSeeker Payment for claims made between 16 April 2020 and 31 December 2020.

The temporary modification of the definition of 'member of a couple' for JobSeeker Payment by the No. 8 Determination has simplified aspects of the claims process and has enabled claimants to receive JobSeeker Payment more quickly.

The amendments made by items 18 and 27 will continue the modification of this definition of member of a couple for JobSeeker Payment purposes for the period 1 January 2021 to 31 March 2021. The modifications made by these items are in identical terms to those made by the No. 8 Determination.

Items 19 and 20

Items 19 and 20 vary sections 739A and 745M of the Act. The effect of these items is to ensure that the newly arrived resident's waiting period and seasonal work preclusion period continue to be waived during the period 1 January 2021 to 31 March 2021 for recipients of Special Benefit.

Item 21

Item 21 varies section 1046 of the Act to insert temporary subsections 1046(3A) and 1046(4A). The effect of this item is to allow the Secretary to continue to extend the two-week and 12-week qualification grace periods to a total grace period of 18 weeks in recognition of the continued difficulty for some people, in particular people with disability, to access the workplace and other activities. The amendments ensure that if a person's standard two-week or 12-week qualification grace period ends between 12 June 2020 and 31 March 2021, they can continue to have an 18-week grace period during which they can remain qualified for mobility allowance despite failing to meet the qualification requirements for the allowance. The Secretary must still be satisfied that the section applies because of the impact of COVID-19. Also, where the grace period (as extended by the Secretary under the modified provision) would otherwise end after 31 March 2021, the grace period will end on 31 March 2021.

The Social Security (Coronavirus Economic Response – 2020 Measures No. 10) Determination 2020 was made under item 40A on 25 March 2020. The No. 11 Determination modified the Act so the Secretary can extend a person's standard mobility allowance two-week and 12-week qualification grace periods.

Under normal circumstances, the standard two-week and 12-week qualification grace periods in section 1046 of the Act ensure that, where a person ceases to qualify for mobility allowance, they can have an additional two-week or 12-week qualification for mobility allowance before the allowance is cancelled. Whether a person has a two-week or 12-week grace period depends on the reason for the person ceasing to qualify for mobility allowance.

The No. 11 Determination currently ensures both qualification grace periods can be extended to a total grace period of 18 weeks if the Secretary is satisfied the person has been impacted by COVID-19 and the extension does not result in a grace period that ends later than 31 December 2020. Where the grace period (as extended by the Secretary under the modified provision) would end after 31 December 2020, the grace period will end on 31 December 2020.

Item 21 of Schedule 1 to this Determination continues the arrangements in place under the No. 11 Determination until 31 March 2021.

If a person's standard two-week or 12-week qualification grace period ends after 31 March 2021, their grace period will be two weeks or 12 weeks (depending on their circumstances). That is, if a person's grace period under the unmodified version of section 1046 of the Act would extend past 31 March 2021, this Determination will not operate to shorten that grace period.

Items 22 to 26 and 28 to 34

The Social Security (Coronavirus Economic Response – 2020 Measures No. 4) Determination 2020 (the No. 4 Determination) and Social Security (Coronavirus Economic Response – 2020 Measures No. 14) Determination 2020 (the No. 14 Determination) set concessional ordinary income-free areas and taper rates until 31 December 2020 for recipients of JobSeeker Payment (except single principal carers) and Youth Allowance (Other).

Items 22 to 26 and 28 to 34 of Schedule 1 to this Determination extend those concessional income-free areas and taper rates from 1 January 2021 to 31 March 2021.

Items 22 to 26 vary the rate calculator provisions for Youth Allowance (at the end of section 1067G of the Act) until 31 March 2021 to extend:

- the \$300 per fortnight ordinary income free area; and
- the 60-cent taper rate for income above that ordinary income free area.

As with the amendments made by the No. 14 Determination, these temporary changes to the rate calculator provisions for Youth Allowance only apply to recipients of Youth Allowance (Other).

Items 28 to 34 vary the rate calculator provisions for JobSeeker Payment (at the end of section 1068 of the Act) until 31 March 2021 to extend:

- the \$300 per fortnight ordinary income-free area;
- the 60-cent taper rate for income above that ordinary income-free area; and
- the 27-cent taper rate associated with the partner income test (see item 30 which extends, until 31 March 2021, the modifications to the partner income taper rates made by the No. 4 Determination).

For JobSeeker Payment recipients that are single principal carers, the current arrangements will remain in place. That is, the \$106 per fortnight ordinary income-free area will apply along with the 40-cent taper rate for income above that ordinary income-free area.

Items 35 to 39

The No. 10 Determination modified the Act so the Secretary can extend the portability periods for certain recipients of the Age Pension and recipients of the Disability Support Pension (who are severely disabled or have a severe impairment under the Act) until 31 December 2020. This has addressed payment portability issues for pensioners unable to return to, or depart from, Australia within 26 weeks due to travel restrictions resulting from COVID-19. The extended portability period maintains their entitlements as if they had been able to return to, or depart from, Australia within the standard 26-week period in the Act.

Items 35 to 39 allow the Secretary to extend the portability period for these pensioners from 1 January 2021 until 31 March 2021 (subject to the Secretary being satisfied of certain matters detailed below).

Items 35, 36, 37 and 39 amend section 1216, section 1220A, section 1220B and clause 128 of Schedule 1A to the Act. Item 38 inserts new section 1221A into Division 3 of Part 4.2 of the Act. These temporary modifications extend the arrangements put in place by the No. 10 Determination until 31 March 2021.

A pensioner temporarily overseas may apply for a portability extension if they are unable to return to Australia within 26 weeks due to COVID-19. Normally, after 26 weeks overseas, their pension rate is recalculated based on their Australian Working Life Residence and may be reduced. A person also loses access to certain supplementary payments such as rent assistance. The portability extensions provided for in items 35, 36 and 37 ensure their pension rate and relevant supplementary payments are unaffected after 26 weeks. The Secretary will have the discretion to extend the pension portability period beyond 26 weeks if satisfied that the person's absence from Australia is temporary and their inability to return to Australia before the end of the 26-week portability period is a result of COVID-19.

The amendments in items 38 and 39 also allow pensioners who were grandfathered under previous portability changes, and normally live overseas, to apply for a portability extension if they are temporarily in Australia and unable to return to their home country within 26 weeks. This ensures they do not lose their grandfathered status. Grandfathered status is normally lost after 26 weeks in Australia, which may result in the pensioner receiving less assistance when they return home than they did while grandfathered. The Secretary will have the discretion to extend the portability period if satisfied that the person's return to Australia is temporary and their inability to leave Australia to return to their home country before the end of the 26-week portability period is a result of COVID-19.

Part 2 of Schedule 1 – Modifications ending at the end of 16 April 2021**Item 40**

Under the Social Security (Coronavirus Economic Response – 2020 Measures No. 11) Determination 2020 (the No. 11 Determination), section 23 of the Act is currently modified to extend the employment income nil rate period for social security benefit and pension recipients to 31 December 2020. The ‘employment income nil rate period’ is the period for which social security benefit and pension recipients can be treated as ‘receiving’ a pension or benefit, and retain access to certain benefits such as concession cards, despite receiving a nil rate of payment due to employment income (whether their own, their partner’s or a combination of the two). As well as retaining access to certain benefits, recipients can also return seamlessly to their social security benefit or pension should their employment income (whether their own, their partner’s or a combination of the two) fall below the relevant threshold and their payment becomes payable again.

Item 40 of Schedule 1 to this Determination extends the employment income nil-rate period from 1 January 2021 to 16 April 2021. This item ensures that a person whose standard 12-week employment income nil rate period ends between 22 June 2020 and 16 April 2021 will have an employment income nil rate period that runs until at least 16 April 2021.

Schedule 2 – Amendments

Items 1 to 4

Items 1 to 4 of Schedule 2 to this Determination amend the No. 2 Determination and the No. 6 Determination.

The No. 2 Determination provides for the payment of the COVID-19 supplement to recipients of Austudy Payment.

The No. 6 Determination provides for the payment of the COVID-19 supplement to recipients of Special Benefit, Partner Allowance and Widow Allowance.

The amendments made by items 1 to 4 of Schedule 2 to this Determination clarify that the COVID-19 supplement is to be paid to recipients of these payments at a rate of \$250 per fortnight for social security instalment periods that begin on a day during the period 25 September 2020 to 31 December 2020 (inclusive).

The amendments omit references to '19 December 2020' and replace these with references to '25 September 2020' to avoid any doubt about the effect of the amendments made to the No. 2 Determination and the No. 6 Determination by the No. 15 Determination.

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. 16) Determination 2020

The Social Security (Coronavirus Economic Response – 2020 Measures No. 16) 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

This Determination will ensure continued additional financial assistance through the COVID-19 supplement and other temporary measures of support, to eligible Australians financially impacted by COVID-19.

Part 1 of Schedule 1 to this Determination extends the following temporary social security measures to 31 March 2021:

- time-limited COVID-19 supplement of \$150 per fortnight for recipients of JobSeeker Payment; Parenting Payment; Youth Allowance (student and apprentice); Youth Allowance (other); Austudy Payment; Widow Allowance; Special Benefit; and Farm Household Allowance;
- waivers of the ordinary waiting period for JobSeeker Payment, Parenting Payment and Youth Allowance (Other), and the seasonal work preclusion period and the newly arrived resident's waiting period for JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment and Special Benefit;
- the exemption from the qualifying residence requirement for Parenting Payment;
- the modifications of the social security law in relation to the process used to determine when a person is regarded as a 'member of a couple' for the purposes of JobSeeker Payment;
- income free areas and taper rates for JobSeeker Payment and Youth Allowance (other) recipients to \$300 with a 60-cent taper (except single principal carer parents who have an income free area of \$106 and a taper of 40 cents) and the current 27-cent taper rate associated with the partner income test for JobSeeker Payment;
- access to certain payment portability arrangements currently in place for Age Pension recipients (and certain recipients of the Disability Support Pension);

- the power of the Secretary of the Department of Social Services to extend the Mobility Allowance two-week and 12-week qualification grace periods to 18 weeks in recognition of the continued difficulty for some people, in particular people with disability, to access the workplace and other activities.

Under Part 2 of Schedule 1 to this Determination, the period for which income support recipients can maintain eligibility for payment, retain their concession card while receiving a nil rate of payment, and return seamlessly to income support should their earnings fall below the relevant threshold is extended until 16 April 2021.

The extension of the period for which the COVID-19 supplement is payable to recipients of JobSeeker Payment and Youth Allowance will also result in an extension of the period for which the special COVID-19 qualification categories for these payments will apply. A person will be able to qualify for Youth Allowance (under section 540BA of the Act) and JobSeeker Payment (under subsection 593(5) of the Act) until 31 March 2021.

Also, Schedule 2 to this Determination clarifies that the COVID-19 supplement is payable to recipients of Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance for the period 25 September 2020 to 31 December 2020 at a rate of \$250 a fortnight for social security instalment periods that begin on a day during the period 25 September 2020 to 31 December 2020 (inclusive).

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

The right to social security and adequate standard of living

COVID-19 supplement

Articles 9 and 11 of the ICESCR are promoted by providing payments to assist in achieving an adequate standard of living due to the national health emergency. This is achieved by extending the COVID-19 supplement to 31 March 2021. The payments are targeted at vulnerable groups who receive Government assistance and has a flow-on effect to the children of recipients by enhancing the temporary financial support for families impacted by COVID-19.

Waiting periods

The extension of the waiver of certain waiting periods including the seasonal work preclusion period and the newly arrived resident's waiting period is consistent with human rights as it facilitates faster access to social support during the pandemic.

Qualification for Parenting Payment

The exemption from the qualifying residence requirement for Parenting Payment promotes human rights by facilitating faster access to the payment during the pandemic, in conjunction with the waiver of the newly arrived resident's waiting period.

Member of a couple definition

The temporary modifications of the social security law in relation to the process used to determine when a person is regarded as a 'member of a couple' for the purposes of JobSeeker Payment promote human rights because they facilitate faster access to social support during the pandemic.

Income-free areas and taper rates

The extension of the temporary income-free area, taper rate, and partner income test for JobSeeker Payment promotes human rights through assisting income support recipients to keep more of what they earn and encourages work.

Portability

Access to certain payment portability arrangements currently in place for Age Pension recipients (and certain recipients of the Disability Support Pension) promotes human rights because, increased portability prevents pension entitlements being affected for extended absences from Australia or the recipient's home country due to the pandemic.

Mobility Allowance

The extension of the period for which a person can qualify for an extended Mobility Allowance qualification grace period of a maximum 18 weeks, is consistent with human rights as it will enable people to maintain their eligibility for payment during a period of economic recovery from the pandemic.

Extension of nil-rate periods

The extension of the period for which income support recipients can maintain eligibility for payment and retain their concession card while receiving a nil rate of payment until 16 April 2021, is consistent with human rights as it will enable people maintain their eligibility for payment during a period of economic recovery from the pandemic.

Conclusion

The Determination is compatible with human rights because it advances the protection of human rights.

Anne Ruston, Minister for Families and Social Services