

EXPLANATORY STATEMENT

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

Social Security Act 1991

Social Security (Qualification for Crisis Payment – National Health Emergency)
Amendment Determination (No. 2) 2022

Purpose

The Social Security (*Qualification for Crisis Payment – National Health Emergency*) *Amendment Determination (No. 2) 2022* (this Determination) amends the Social Security (Coronavirus Economic Response – 2020 Measures No. 2) Determination 2020 (the No. 2 Determination). The purpose of this Determination is to extend until 30 September 2022 the period during which a requirement to quarantine or self-isolate may result in qualification for crisis payment under the *Social Security Act 1991* (the Act) in circumstances relating to the coronavirus known as COVID-19.

Background

In response to the impact of COVID-19, the Act was amended by the *Coronavirus Economic Response Package Omnibus Act 2020* (Omnibus Act) to expand eligibility for crisis payment by inserting section 1061JIA into the Act. Subsection 1061JIA(2) of the Act enables the Minister to determine requirements for qualification for crisis payment relating to a national health emergency for the purposes of paragraph 1061JIA(1)(b) of the Act.

Section 6 of the No. 2 Determination sets out the requirements to satisfy paragraph 1061JIA(1)(b) of the qualification criteria for crisis payment relating to a national health emergency under section 1061JIA of the Act.

Since 1 July 2022, to fulfil paragraph 1061JIA(1)(c) of the Act, the Secretary had to be satisfied that the person is in quarantine or self-isolation as a result of advice from the Commonwealth, a State or Territory or from a health professional regarding COVID-19, which quarantine or self-isolation commenced prior to 1 July 2022.

This Determination amends paragraph 6(c) of the No. 2 Determination to substitute the requirement that the relevant period of quarantine or self-isolation must have commenced before 1 October 2022. This requirement has been extended to reflect the increasing impact of COVID-19 during the current wave of infections, particularly with respect to the need for quarantine and self-isolation in accordance with Commonwealth, State and Territory requirements.

This Determination will enable income support recipients who did not qualify for a crisis payment because the isolation period commenced on or after 1 July 2022 to be back-paid for that period of isolation. To the extent this allows payments in respect of a past period, and hence retrospective, the instrument is entirely beneficial.

Commencement

This Determination commences on the day after it is registered.

Consultation

Consultation has previously been undertaken with the Department of Education, Skills and Employment, the Attorney-General's Department and the Department of Industry, Science, Energy and Resources, in relation to the No. 2 Determination.

In relation to this Determination, consultation was undertaken with Services Australia, the National Recovery and Resilience Agency and the Department of the Prime Minister and Cabinet.

This consultation includes all relevant Australian Public Service stakeholders and subject matter experts. Further consultation was deemed unnecessary as this Determination defers for a further three months the cessation of a temporary measure intended to provide short-term support during the COVID-19 pandemic.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation, a RIS is not required for the proposed amendments in this instrument (OBPR ID 43972).

Availability of independent review

Independent internal and external 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 that are guided by this Determination.

Explanation of the provisions

Section 1 provides that the name of this Determination is the Social Security (Qualification for Crisis Payment – National Health Emergency) Amendment Determination (No. 2) 2022.

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

Section 3 provides that this Determination is made under subsection 1061JIA(2) of the Act.

Section 4 provides that the No. 2 Determination is amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 amends paragraph 6(c) of the No. 2 Determination by omitting the word “July” and substituting “October”.

Paragraphs (a) and (b) have not been changed. Therefore, to meet paragraph 1061JIA(1)(b) of the Act, the Secretary must be satisfied that:

- the person is in financial hardship;
- the person is in quarantine or self-isolation as a result of advice from the Commonwealth, a State or Territory or from a health professional regarding the coronavirus, or is caring for an immediate family member or a member of the person's household in such circumstances; and
- the quarantine or self-isolation commenced before 1 October 2022.

Statement of Compatibility with Human Rights

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

Social Security Act 1991

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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 delays the cessation of the Crisis Payment for National Health Emergency (COVID-19) to 30 September 2022.

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 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.

Articles 9 and 11 of the ICESCR and Article 26 of the Convention on the Rights of the Child are promoted by the Australian Government's continued provision of income support payments, concession and health care cards, and supplementary payments. These measures are targeted at vulnerable groups who require assistance and have a flow-on effect to the children of recipients.

Crisis Payment for National Health Emergency (COVID-19) is a supplementary payment that provides additional financial support to income support recipients who are required to self-isolate or quarantine or care for another person who is required to self-isolate or quarantine.

This payment was only ever intended to be a temporary measure during a period of economic uncertainty and the development of vaccines. As the economy is now recovering and the vaccines are being rolled out, consistent with the closure of other Government COVID-19 measures, the Crisis Payment National Health Emergency for the purposes of COVID-19 is also being closed, although this is deferred until 30 September 2022.

Conclusion

This Determination is compatible with human rights because it does not restrict the basic right to social security. To the extent that it may limit this right for recipients

who are required to isolate due to COVID-19, it is a reasonable, proportionate and necessary response to achieve the objective of ensuring the long-term sustainability of the social security system in the context of a recovering economy post-pandemic.

Amanda Rishworth, Minister for Social Services