

EXPLANATORY STATEMENT

Issued by authority of the Minister for Emergency Management

Social Security Act 1991

Social Security (Repeal—LIN 24/005) Instrument 2024

Authority

1. The *Social Security (Repeal—LIN 24/005) Instrument 2024* (the Instrument) is made under subsections 1061KC(2) and 1061L(2) of the *Social Security Act 1991* (the Act) by the Minister for Emergency Management.
2. The Australian Government Disaster Recovery Payment (AGDRP) provides an immediate, one-off payment to Australians adversely affected by a major disaster. The Disaster Recovery Allowance (DRA) is a short-term income support payment to Australians who can demonstrate that their income has been directly affected by a major disaster.
3. Subsection 1061L(2) of the Act provides that the Minister may determine in writing, in relation to a major disaster, the circumstances in which persons are to be taken to be adversely affected by the disaster for AGDRP.
4. Subsection 1061KC(2) of the Act requires the Minister, by legislative instrument, to specify a method for calculating the fortnightly rate of the DRA.
5. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power 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.

Purpose and effect of the Instrument

6. Instruments to activate AGDRP and DRA are made to allow applications for payments by persons adversely affected by a major disaster. Applications for these payments are only able to be made for a six-month period from the time an instrument is made. These instruments, by their nature, are therefore available for repeal within a shorter period than the ten years provided for by the sunset regime under Part 4 of Chapter 3 of the *Legislation Act 2003*, and particularly section 50 of that Act.
7. Because instruments to activate AGDRP and DRA are for a specific time-limited purpose to support applications in a defined period, it is appropriate, and efficient, to consider the repeal of all such instruments due to sunset over the next five years (until 2027). The ten instruments repealed by this Instrument are instruments made in response to major disasters declared between 2013 and 2018 for which AGDRP and DRA were activated.

8. The purpose of the Instrument is to proactively repeal ten legislative instruments that were otherwise due to sunset between 2024 and 2027. These instruments have been identified for proactive repeal, in accordance with the Attorney-General's Department's *Guide to managing the sunset of legislative instruments* and the Department of Home Affairs' best practice approach to the review and management of sunset instruments.
9. The instrument repeals the following ten legislative instruments:
 - a) *Social Security (Australian Government Disaster Recovery Payment) Determination 2013 (No. 5) (AGDRP Determination 2013)*;
 - b) *Social Security (Australian Government Disaster Recovery Payment) Determination 2014 (No.1) (AGDRP Determination 2014)*;
 - c) *Social Security (Disaster Recovery Allowance) (Rate Calculator) Determination 2013 (2013 DRA Calculator)*;
 - d) *Social Security (Australian Government Disaster Recovery Payment) Determination 2015 (No. 1) (AGDRP Determination 2015, 1)*;
 - e) *Social Security (Australian Government Disaster Recovery Payment) Determination 2015 (No. 2) (AGDRP Determination 2015, 2)*;
 - f) *Social Security (Australian Government Disaster Recovery Payment) Determination 2015 (No. 3) (AGDRP Determination 2015, 3)*;
 - g) *Social Security (Australian Government Disaster Recovery Payment) Determination 2015 (No. 4) (AGDRP Determination 2015, 4)*;
 - h) *Social Security (Australian Government Disaster Recovery Payment) Determination 2015 (No. 5) (AGDRP Determination 2015, 5)*;
 - i) *Social Security (Australian Government Disaster Recovery Payment) Determination 2016 (No. 1) (AGDRP Determination 2016)*; and
 - j) *Social Security (Australian Government Disaster Recovery Payment) Determination 2017 (No. 1) (AGDRP Determination 2017)*.

Background

10. The *AGDRP Determination 2013* determined who was eligible for the AGDRP following the 2013 bushfires in New South Wales. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
11. The *AGDRP Determination 2014* determined who was eligible for the AGDRP following the 2014 bushfires in Western Australia. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
12. The *2013 DRA Rate Calculator* provided the method for calculating the fortnightly rate for the Disaster Recovery Allowance. This instrument is no longer required as it has been superseded by the *Social Security (Disaster Recovery Allowance Rate Calculator) Determination 2020* (the 2020 Instrument). While the 2020 Instrument repealed the preceding DRA Rate Calculator instrument - *Social Security (Disaster Recovery Allowance) (Rate calculator) Determination 2015* (the 2015 Instrument) – the 2015 Instrument did not include an equivalent provision to repeal the 2013 DRA Rate Calculator when the 2015 Instrument commenced. As such, the 2013 DRA Rate Calculator remained on the statute book until its repeal by the current Instrument.

13. The *AGDRP Determination 2015, 1* determined who was eligible for the AGDRP following the 2015 bushfire in South Australia. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
14. The *AGDRP Determination 2015, 2* determined who was eligible for the AGDRP following the 2015 Tropical Cyclone Marcia in Queensland. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
15. The *AGDRP Determination 2015, 3* determined who was eligible for the AGDRP following the 2015 Tropical Cyclone Lam in Northern Territory. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
16. The *AGDRP Determination 2015, 4* determined who was eligible for the AGDRP following the 2015 severe weather, rainfall and flooding in New South Wales. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
17. The *AGDRP Determination 2015, 5* determined who was eligible for the AGDRP following the 2015 bushfire in South Australia. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
18. The *AGDRP Determination 2016* determined who was eligible for the AGDRP following the 2016 bushfire in Western Australia. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.
19. The *AGDRP Determination 2017* determined who was eligible for the AGDRP following the 2017 Tropical Cyclone Debbie in Queensland. As the standard 6-month timeframe for applications has ended, the instrument does not need to be replaced as it is no longer required to be in force.

Consultation

20. The Office of Impact Analysis was consulted prior to making this instrument and advised that an impact analysis was not required. The OIA reference number is OIA23-05943.
21. The Department consulted the National Emergency Management Agency (NEMA) in relation to the proposed repeal of the ten instruments. The repeal of the instruments was supported, noting that for each of the nine AGDRP Determinations, the 6-month timeframe for applications had concluded and the instruments were no longer required. Similarly, the 2013 DRA Rate Calculator was no longer required as it had been superseded but not repealed by the 2015 Instrument, and subsequently the 2020 Instrument. No additional consultation was considered appropriate or practicable in the circumstances, having regard to the requirements under section 17 of the *Legislation Act 2003*.

Details of the Instrument

22. Paragraph (a) specifies the repeal of the AGDRP Determination 2013.

23. Paragraph (b) specifies the repeal of the AGDRP Determination 2014.
24. Paragraph (c) specifies the repeal of the DRA Calculator.
25. Paragraph (d) specifies the repeal of the AGDRP Determination 2015, 1.
26. Paragraph (e) specifies the repeal of the AGDRP Determination 2015, 2.
27. Paragraph (f) specifies the repeal of the AGDRP Determination 2015, 3.
28. Paragraph (g) specifies the repeal of the AGDRP Determination 2015, 4.
29. Paragraph (h) specifies the repeal of the AGDRP Determination 2015, 5.
30. Paragraph (i) specifies the repeal of the AGDRP Determination 2016.
31. Paragraph (j) specifies the repeal of the AGDRP Determination 2017.
32. The Instrument commences the day after it is registered on the Federal Register of Legislation.

Other matters

33. The Instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* to the extent that it applies to the *DRA Rate Calculator*. Instruments made under 1061KC(2) of the Social Security Act 1991 are disallowable. The Determination is disallowable to the extent that this instrument purports to repeal the DRA Rate Calculator.
34. Subsection 1061L(3) of the Act provides that a Determination under section 1061L is a legislative instrument. However, the Instrument is not subject to disallowance to the extent it repeals nine instruments made under subsection 1061L(2) of the Act. Subsection 1061L(3) of the Act provides that section 42 of the *Legislation Act 2003* does not apply.
35. The Instrument is compatible with the human rights and freedoms recognised or declared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out in the **Attachment**.

Statement of Compatibility with Human Rights

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

Social Security (Repeal—LIN 24/005) Instrument 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the *Social Security (Repeal—LIN 24/005) Instrument 2024* (the Disallowable Legislative Instrument) is to proactively repeal ten legislative instruments due to sunset between 2024 and 2027.

The Australian Government Disaster Recovery Payment (the AGDRP) provides an immediate, one-off payment to Australians adversely affected by a major disaster. Subsection 1061L(2) of the *Social Security Act 1991* (Social Security Act) provides that the Minister may determine in writing, in relation to a major disaster, the circumstances in which persons are to be taken to be adversely affected by the disaster for AGDRP. Subsection 1061L(3) of the Social Security Act provides that a determination under section 1061L is a legislative instrument. However, such a determination is not subject to disallowance by the Parliament as subsection 1061L(3) of the Social Security Act provides that section 42 of the *Legislation Act 2003* does not apply to it. The Disallowable Legislative Instrument repeals nine AGDRP determinations. As those determinations are exempt from disallowance, a Statement of Compatibility with Human Rights is not required in relation to the repeal of these determinations.

The Disaster Recovery Allowance (DRA) is short-term income payment to Australians who can demonstrate that their income has been directly affected by a major disaster. Subsection 1061KC(2) of the Act requires the Minister to create a legislative instrument specifying a method for calculating the fortnightly rate of the DRA. Instruments made under 1061KC(2) of the Social Security Act are disallowable. The Disallowable Legislative Instrument is disallowable to the extent that this instrument repeals the *Social Security (Disaster Recovery Allowance) (Rate Calculator) Determination 2013* (2013 Determination) which was made under 1061KC(2) of the Social Security Act.

The 2013 Determination is no longer required as it has been effectively inoperative since 2015. The 2013 Determination was replaced by the *Social Security (Disaster Recovery Allowance) (Rate calculator) Determination 2015* (2015 Determination), however was not repealed at that time. The 2015 Determination was repealed by the *Social Security (Disaster Recovery Allowance Rate Calculator) Determination 2020* (2020 Determination), which also did not repeal the 2013 Determination. The purpose of the Disallowable Legislative Instrument is to repeal the inoperative 2013 Determination.

The 2020 Determination remains in effect and the Statement of Compatibility with Human Rights to that instrument sets out the human rights implications and provides reasons for that instrument being compatible with human rights on the basis of supporting the right to social security.

Human rights implications

As noted above, a Statement of Compatibility with Human Rights is not required in relation to the repeal of the 9 AGDRP Determinations, which were themselves exempt from disallowance. In any event, applications for the AGDRP are only able to be made for a six month period from the time such a determination is made. Repealing these determinations therefore does not affect anyone's rights as the determinations range from 2013 to 2017.

The 2013 Determination, which was disallowable, engaged the right to social security (Article 9, *International Covenant on Economic, Social and Cultural Rights* (ICESCR)).

Article 9 of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 9 of ICESCR and Article 26 of the CRC require States to recognise the right of everyone to social security, including social insurance, including establishing a social security system under domestic law, and that public authorities must take responsibility for the effective administration of the system.

As stated in the Statement of Compatibility with Human Rights for the 2013 Determination, it ensured that individuals who claim DRA have a rate calculated based on their age, living arrangements, partnered status and whether they are responsible for a dependent child/children. Where a person may receive a greater rate of payment from another income support payment, their right to apply for another payment was retained. This generally advanced the right to social security.

The 2013 Determination is no longer required as it has been inoperative since 2015 and has been effectively replaced by the 2020 Determination. As a result, repeal of the 2013 Determination by the Disallowable Legislative Instrument does not engage or limit any of the applicable rights or freedoms.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Murray Watt
Minister for Emergency Management**