

2010 - 2011 - 2012 - 2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY LEGISLATION AMENDMENT (DISASTER RECOVERY  
ALLOWANCE) BILL 2013**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Emergency Management,  
the Hon Mark Dreyfus QC MP)

## SOCIAL SECURITY LEGISLATION AMENDMENT (DISASTER RECOVERY ALLOWANCE) BILL 2013

### OUTLINE

The *Social Security Legislation Amendment (Disaster Recovery Allowance) Bill 2013* (the Bill) will create a new payment, the Disaster Recovery Allowance (the Allowance), a fortnightly income support payment for individuals whose income has been affected by a major disaster.

The Bill will amend the *Social Security Act 1991* (the SS Act), the *Social Security (Administration) Act 1999* (the Administration Act) and the *Income Tax Assessment Act 1936* to implement this change.

These measures will come into effect on 1 October 2013.

#### The Disaster Recovery Allowance

The Bill will amend the SS Act, the Administration Act and the *Income Tax Assessment Act 1936* to create a new payment, the Disaster Recovery Allowance (the Allowance). The Allowance will provide short-term income support to individuals with a demonstrated loss of income following an onshore disaster, whether natural or otherwise. The Allowance will be a taxable, fortnightly payment at a rate based on the maximum applicable Newstart Allowance or Youth Allowance rate. The payment is modelled on ex-gratia payments which were made available on a number of occasions including in 2009 following the Victorian Bushfires, in 2010-11 following the flooding across a number of states and in 2013.

Once a person has qualified for the payment, the Allowance will be paid at a rate between \$0 and the maximum applicable rate. Individuals' rates will be calculated under an instrument created by the Minister under the SS Act. The rate calculation process will be placed in a legislative instrument to ensure that it can be adapted and adjusted for future disaster events if required and efficiently tailored to meet the recovery needs of the affected communities.

The Allowance will be made available by the Minister determining under the SS Act that an event is a 'Part 2.23B major disaster', in a similar manner in which the Minister determines that an event is a 'major disaster' for the purpose of providing the Australian Government Disaster Recovery Payment (AGDRP) — a lump sum payment provided to individuals who have been adversely affected by a disaster. The activation of the Allowance and the AGDRP will be entirely separate. Therefore the Minister will be able to make either available without the other, or be able to activate both.

To activate the Allowance for an event the Minister will have to be satisfied that:

- the event is of national significance; and
- that the event has had such an impact that a government response in the form of income support is required.

Further, the Minister will be required to consider the extent to which the nature or

extent of the disaster is unusual and the number of workplaces that are disrupted. In making a determination which activates the Allowance, the Minister must specify one or more areas affected by the event, or specify one more industries in one or more areas affected by the event. These affected areas or industries will form part of the eligibility criteria, allowing the Minister to tailor the Allowance to effectively and accurately respond to the impact of the disaster.

To be eligible for the Allowance, an individual must be:

- an Australian resident or the holder of a visa of a class determined in subparagraph 729(2)(f)(v) of the SS Act;
- who is at least 16 years old and not a dependent child;
- who is not currently in receipt of another social security entitlement;
- who has suffered a loss of income as a direct result of the disaster; and
- whose Allowance rate at the time of claiming the Allowance would be greater than nil.

Where the Minister has only determined one or more affected areas, the individual must reside in, or earn, derive or receive an income from working in, one of those areas. Where the Minister has determined one or more affected industries in one or more affected areas, the individual must have derived their income from one of those industries by working in one of those areas.

Once granted, the Allowance will be paid fortnightly in arrears for 13 weeks or until the individual regains their pre-disaster income level.

By incorporating the Allowance into the social security legislation, the fraud, debt recovery and review processes and protections set out in the SS Act and the Administration Act will apply in the same manner as they do to other social security payments.

## **FINANCIAL IMPACT STATEMENT**

This Bill proposes the creation of a new payment which will be made to disaster affected individuals.

Implementation costs for these payments have been estimated at \$1.7 million over five years. These costs will be absorbed by the administering department.

The unpredictability of major disasters and their impact on Australia means that the cost of the Allowance will not be regular. The Allowance will be treated as a special appropriation which is contingent on a relevant disaster event occurring.

## **ACRONYMS AND ABBREVIATIONS**

This Explanatory Memorandum uses the following abbreviations:

- ‘Administration Act’ means the *Social Security (Administration) Act 1999*.
- ‘AGDRP’ means the Australian Government Disaster Recovery Payment.
- ‘Allowance’ means the Disaster Recovery Allowance.
- ‘Bill’ means this Bill, the Social Security Legislation Amendment (Disaster Recovery Allowance) Bill 2013.
- ‘SS Act’ means the *Social Security Act 1991*.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### **Social Security Legislation Amendment (Disaster Recovery Allowance) Bill 2013**

This Bill 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 Bill**

This Bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999* and the *Income Tax Assessment Act 1936* to legislate the Disaster Recovery Allowance (the Allowance), which will provide short-term income support to individuals with a demonstrated loss of income following an onshore disaster, whether natural or otherwise. The Allowance will be a means tested, taxable, fortnightly payment at a rate based on the maximum applicable Newstart or Youth Allowance rate. The payment is modelled on previous ex-gratia payments that were made available on a number of occasions including in 2009 following the Victorian Bushfires, in 2010-11 following the flooding across a number of states and in 2013.

#### **Human rights implications**

The Bill engages the following human right:

*Right to Social Security:*

Introducing the Allowance engages the right to social security recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights.

Legislating the Disaster Recovery Allowance will continue an existing social security payment, but with a clearer and more certain legal basis and with more fixed and defined qualification criteria. In addition, individuals applying for the Allowance will have access to review mechanisms in relation to decisions which affect them. This will generally advance the right to social security.

#### **Conclusion**

This Bill is compatible with human rights because it generally advances human rights.

## NOTES ON CLAUSES

### *Clause 1 — Short title*

1. This clause provides a short title for the Act, the *Social Security Legislation Amendment (Disaster Recovery Allowance) Act 2013*.

### *Clause 2 — Commencement*

2. This clause provides that the Act will commence on 1 October 2013.

### *Clause 3 — Schedule(s)*

3. This clause provides that the Schedule to the Bill will amend or repeal each Act as set out in the applicable items in the Schedule and that any other item in the Schedule to the Bill has effect according to its terms.

## **Schedule 1 — Disaster Recovery Allowance**

### **Part 1 — Main Amendments**

#### ***Social Security Act 1991***

##### *Item 1*

4. This item inserts the definition of the new term ‘Disaster Recovery Allowance’.

##### *Item 2*

5. This item inserts the definition of the new term ‘Part 2.23B major disaster’.

6. This term will be defined by written ministerial determination under the new section 36A. A determination which defines an event as a Part 2.23B major disaster will trigger the availability of the Allowance in relation to that event.

7. The AGDRP is also activated by a written ministerial determination in relation to a disaster. To ensure that the AGDRP and the Allowance can be made available independently of the other, determinations to activate the AGDRP will continue to define the term ‘major disaster’ while determinations to activate the Allowance will define the term ‘Part 2.23B major disaster’.

##### *Item 3*

8. This item creates the new section 36A.

#### ***Section 36A — Part 2.23B major disaster***

9. The new section 36A will provide that the Minister can make a determination that an event is a ‘Part 2.23B major disaster’. A determination which defines an event as a Part 2.23B major disaster will trigger the availability of the Allowance in relation to that event.

10. The new section 36A will provide that before making a determination, the Minister must be satisfied that the event is a disaster that has had such a significant impact on individuals that a government response in the form of income support is required and that the event was of national significance. In reaching this decision, the Minister must have regard to the extent to which the nature or extent of the disaster is unusual, and the number of workplaces that are disrupted.

11. The new subsections 36A(3) and (4) will provide that determinations can be made in relation to both natural and non-natural disasters, but only those occurring within Australia.

12. New subsection 36A(5) will provide that in addition to stating that the event is a Part 2.23B major disaster, a determination made under the new section 36A must specify one or more areas affected by the event, or specify one or more industries in one or more areas affected by the event. These affected areas and industries will form

part of the eligibility criteria for the Allowance. This will allow the payment to either be focused on a particularly impacted industry, or made more generally available across an affected area.

13. Subsection 36A(6) is included to assist readers and is merely declaratory of the law. A determination made under new section 36A will not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* because the determination will be administrative in character, not legislative.

14. Although decisions under section 36A will be administrative, item 8 of this Bill will amend the Administration Act to provide that they will not be subject to review by the Social Security Appeals Tribunal. This is consistent with the current approach to the decision made under section 36 to make the AGDRP available, and is required to ensure that the Minister can offer assistance to people impacted by a disaster in a responsive and efficient manner, without the potential uncertainty or delay of review. Decisions made by the Minister under section 36A will be high level policy decisions made as part of an overall government strategy for aiding the community in recovering from a major disaster. The exemption is consistent with the purpose of the Tribunal to provide individuals with a review process for decisions by the Department of Human Services (Centrelink) which affect their personal claim for a social security payment.

#### *Items 4 and 5*

15. These items amend section 1061JJ to ensure that receipt of the Allowance cannot entitle an individual to the Crisis Payment. This reflects the purpose of the Crisis Payment to support long-term recipients of social security support.

#### *Item 6*

16. This item inserts the new Part 2.23B. This Part will provide the eligibility criteria, payment rates and other matters applicable to the Allowance

#### ***Section 1061KA — Qualification for Disaster Recovery Allowance***

17. The new section 1061KA will provide the eligibility criteria for the Allowance.

The new paragraph 1061KA(1)(a) will provide that the Allowance will only be granted to individuals who are at least 16 years old. This requirement is intentionally modelled on the definition of ‘dependent child’ provided in section 5 of the SS Act.

18. The new subsection 1061KA(2) will provide that where a person is under 22 years old they will not be eligible if:

- they are wholly or substantially dependent on another person (other than their partner);
- they are not a parent; and
- their income for that financial year will be under \$6,403.

19. The new paragraph 1061KA(1)(b) will provide that the Allowance will only be granted to Australian residents or holders of a visa of a class determined for the purposes of subparagraph 729(2)(f)(v). This will ensure that the Allowance is consistent with other social security payments.
20. The new paragraphs 1061KA(1)(g) and (h) will provide that the Allowance will not be granted to persons who are already receiving a social security entitlement or another payment that the Minister determines under the new subsection 1061KA(5). The AGDRP is not defined as a 'social security entitlement', so individuals may be able to claim both the AGDRP and the Allowance. The Minister's power to determine new payments which exclude the Allowance is required to allow for future changes or additions to the social security law.
21. The new paragraph 1061KA(1)(f) will provide that the Allowance will only be granted to a person who has, or will, suffer a loss of income as a direct result of an event that the Minister has determined under section 36A to be a Part 2.23B major disaster.
22. The new paragraph 1061KA(1)(j) will provide that an individual will only be granted if their payment rate, as calculated under the new section 1061KC, would be greater than nil at the time the claim was determined.
23. The new subsection 1061KA(3) will provide that where the Minister's determination under the new section 36A sets out both one or more affected industries and one or more affected areas, the Allowance will only be granted to a person who earns, derives or receives income from one of those industries and does so by working in one of those areas.
24. The new subsection 1061KA(4) will provide that where the Minister's determination under the new section 36A only sets out one or more affected areas, the Allowance will only be granted to a person who earns, derives or receives income from one of those areas and does so through working in one of those areas, or to a person who resides in one of those areas.
25. The Minister will have the power under new subsection 1061KA(6) to prescribe additional eligibility criteria for the Allowance via written determination. This will allow for the varied impact of disasters, ensuring the Minister can tailor the availability of the Allowance to address any unanticipated characteristics of an event's impact.
26. The new subsection 1061KA(7) will provide that determinations made under section 1061KA will be legislative instruments, but section 42 of the *Legislative Instruments Act 2003* will not apply, meaning that the determinations will not be subject to disallowance. The reason for this exemption is to ensure that the Minister can offer assistance to people impacted by a disaster in a responsive and efficient manner, without the uncertainty of a potential disallowance.

***Section 1061KB — Disaster Recovery Allowance not payable if assurance of support in force***

27. The new section 1061KB will provide that the Allowance will not be payable to a person who is the subject of an assurance of support. The term ‘assurance of support’ has an established meaning within the SS Act and the Migration Regulations.

28. The intention of this restriction is to prevent the Allowance being made available to persons whose residency in Australia was conditional on an assurance of income from another person and who are able to draw on income support from that person.

***Section 1061KC — Rate of Disaster Recovery Allowance***

29. The new section 1061KC will set out how the rate of payment for the Allowance will be calculated.

30. The new subsection 1061KC(1) will provide that the Allowance is paid at a daily rate, which is calculated by dividing the fortnightly rate by 14. This subsection allows the Allowance to be administered under the provisions in the Administration Act for a ‘social security periodic payment’.

31. The new subsection 1061KC(2) will require the Minister to specify, by legislative instrument, a method for calculating the fortnightly rate of the Allowance. The rate calculation process will be placed in a legislative instrument to ensure that it can be more easily adapted and adjusted to future disaster events and tailored to the recovery needs of affected communities.

32. An instrument made under section 1061KC(2) could, for example, provide for the Allowance to be income threshold tested and set out a rate reduction rules based on individuals’ post-disaster income. This could be used to ensure that recipients were encouraged to return to work when possible.

33. The new subsection 1061KC(3) will provide that the fortnightly rate for the Allowance can be nil. New paragraph 1061KA(1)(j) will provide that to qualify for the Allowance a person’s initial rate must be greater than nil. New subsection 1061KC(3) allows a person’s rate for subsequent fortnights to be nil. This might occur where a recipient has found intermittent or insecure post-disaster employment.

34. The new subsection 1061KC(4) will provide that the maximum fortnightly rate for a person under 22 years old will be the maximum basic rate of Youth Allowance that would be payable to the person. These amounts can be found in Table BA in section 1067G-B2 and Table BB in section 1067G-B3 of the SS Act. Section 1191 (item 3A) provides that they are subject to Consumer Price Index based increases annually on 1 January. The maximum basic rate for Youth Allowance does not include supplements such as Pharmaceutical Allowance or Rent Assistance.

35. The new subsection 1061KC(5) will provide that the maximum fortnightly rate for a person at least 22 years old will be the maximum basic rate of the Newstart Allowance that would be payable to the person. These amounts can be found in Table B in section 1068-B1 of the SS Act. Section 1191 (item 2) provides that they are

subject to Consumer Price Index based increases biannually on 20 March and 20 September. The maximum basic rate for the Newstart Allowance does not include supplements such as Pharmaceutical Allowance or Rent Assistance.

***Section 1061KD — Period that Disaster Recovery Allowance is payable***

36. The new section 1061KD will provide that the Allowance is payable for 13 weeks.

***Section 1061KE — Non-receipt of social security payment***

37. The new section 1061KE provides that receipt of the Allowance does not entitle the recipient to other benefits under social security law that are available on the basis of receiving a social security payment. This reflects the Allowance's role as a short-term income support payment and that most recipients of the Allowance would be expected to return to their pre-disaster income within a short period of time.

***Social Security (Administration) Act 1999***

*Item 7*

***Section 27AA — Time Limit for claims for Disaster Recovery Allowance***

38. This item creates the new section 27AA. The new section 27AA will provide that a person can claim the Allowance in relation to an event for up to 6 months after the event was determined to be a Part 2.23B major disaster.

39. The new subsection 27AA(2) will provide that claims will still be accepted more than 6 months after the determination where there are special circumstances that prevented the person being able to lodge the claim within the prescribed time limit, and the claim is made within a reasonable period having regard to the circumstances affecting the person. Given the nature of the payment, being affected by the disaster that has been determined would be unlikely to be enough, by itself, to justify a late claim as these circumstances would also apply to all other claimants.

*Item 8*

40. This item will insert a new subsection into section 31(1A). This amendment creates an exception to the requirement in section 29 that persons must be an Australian resident to claim a social security payment. This will allow the Allowance to be claimed by holders of a visa determined for the purposes of subparagraph 729(2)(f)(v) of the SS Act.

*Item 9*

41. This item will amend paragraph 144(d) to provide that a decision made under section 36A of the SS Act will not be subject to review by the Social Security Appeals Tribunal.

42. This is consistent with the current approach to the decision made under section 36 to make the AGDRP available. It is required to ensure that the Minister can offer assistance to people impacted by a disaster in a responsive and efficient manner,

without the potential uncertainty or delay of review. Decisions made by the Minister under section 36A will be high level policy decisions made as part of an overall government strategy for aiding the community in recovering from a major disaster. The exemption is consistent with the purpose of the Tribunal to provide individuals with a review process for decisions by the Department of Human Services (Centrelink) which affect their personal claim for a social security payment.

*Item 10*

43. This item inserts a new subparagraph into subclause 1(1) of Schedule 1. This has the effect that the Allowance will be a ‘social security periodic payment’ for the purposes of social security law and will be administered under the provisions in the Administration Act for this type of payment.

**Part 2 — Other Amendments**

***Income Tax Assessment Act 1936***

*Item 11*

44. This item will amend subsection 160AAA(1) to add payments made under Part 2.23B to the list of payments which are ‘rebtable benefits’. This amendment will have the effect that the Allowance, which will be considered taxable income, will be subject to the Beneficiary Tax Off-Set scheme.