

EXPLANATORY STATEMENT

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

Coronavirus Economic Response Package Omnibus Act 2020

*Social Security (Coronavirus Economic Response—2020 Measures No. 9)
Determination 2020*

Background

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

Item 40A of Schedule 11 to the Act allows the Minister 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.

This determination has no operation after 31 December 2020.

Purpose

The *Social Security (Coronavirus Economic Response—2020 Measures No. 1) Determination 2020* (No. 1 Determination) temporarily amended section 13 of the *Social Security (Administration) Act 1999* (Administration Act) to deem what date a person's claim for a social security payment is taken to be made if a person:

- made contact with Services Australia during the period 23 March 2020 to 29 March 2020; and
- lodges a claim with Services Australia by 19 April 2020.

The *Social Security (Coronavirus Economic Response—2020 Measures No. 9) Determination 2020* (this Determination) amends the No. 1 Determination so that, rather than having to lodge a claim by 19 April 2020 in order to benefit from the modifications to the deemed date of claim provisions introduced by the No. 1 Determination, claims can be lodged by relevant people up to and including 8 May 2020.

This Determination also provides for people who contact Services Australia during the period 30 March 2020 to 21 April 2020 in relation to a claim for a social security payment, to be taken to have made a claim on the contact day or the date of qualification, if later, provided they lodge a claim by 8 May 2020.

Commencement

This Determination commences on 30 March 2020.

Consultation

Due to the need to take urgent action to provide additional social security support to Australians affected by the unforeseen Coronavirus pandemic, no specific consultation was undertaken on this instrument.

Regulation Impact Statement (RIS)

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

Explanation of the provisions

Item 1 – Name

Item 1 names this Determination the *Social Security (Coronavirus Economic Response—2020 Measures No. 9) Determination 2020*.

Item 2 – Commencement

Item 2 sets the commencement of this Determination as 30 March 2020. The commencement of this Determination prior to the date of registration is authorised by section 12 of the *Legislation Act 2003* (Legislation Act). This Determination is of a beneficial nature as it increases the amount of income support certain recipients will receive by deeming a claim to have been made earlier than it was in fact made in

certain circumstances. For the purposes of subsection 12(2) of the Legislation Act, the commencement of the Determination does not affect the rights of a person so as to disadvantage the person and does not impose liabilities on a person in respect of anything done or omitted to be done before this Determination was registered.

Item 3 – Authority

Item 3 provides that this Determination is made under item 40A of Schedule 11 to the Act.

Item 4 – Modifications

Item 4 provides that each modification of the operation of a provision of a social security law (within the meaning of the *Social Security Act 1991*) as set out in Schedule 1 to this Determination is determined for the purposes of item 40A of Schedule 11 to the Act.

Item 5 – Amendments

Item 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.

Schedule 2 of this Determination sets out amendments to the No. 1 Determination.

Schedule 1 – Modifications to the Administration Act

Item 1 – Variation of section 13 of the Administration Act

Item 1 inserts a new subsection 13(3D) of the Administration Act (before subsection 13(4) of that Act) on a temporary basis to address the situation where a person contacts Services Australia in the period from 30 March 2020 to 21 April 2020 but did not lodge a claim on the contact day. In these circumstances, if the claim is completed and lodged with Services Australia by 8 May 2020, the person will be taken to have made the claim on the date they contacted Services Australia, or, if they only become qualified for the payment on a later date, that later date.

There have been high demands placed on Services Australia because of circumstances relating to COVID-19. This new subsection ensures that a person is not disadvantaged because it may be difficult to lodge a claim with Services Australia at the time of first contact.

Schedule 2 – Amendments to the No. 1 Determination

Item 2 – Amendments to subsections 13(3B) and 13(3C) of the Administration Act

Item 1 amends subsection 13(3B) and subsection 13(3C) of the Administration Act (recently inserted by the No. 1 Determination) to extend the date by which a person must complete a claim under those subsections to 8 May 2020.

The item omits references to “19 April 2020” (wherever occurring) in Schedule 2 to the No. 1 Determination and substitutes references to “8 May 2020”.

The No. 1 Determination temporarily amended section 13 by adding subsection 13(3B) and subsection 13(3C) of the Administration Act to deem what date a person’s claim for a social security payment is taken to be made if a person:

- made contact with Services Australia during the period 23 March 2020 to 29 March 2020; and
- lodges a claim with Services Australia by 19 April 2020.

The Social Security (Coronavirus Economic Response—2020 Measures No. 9) Determination 2020 (this Determination) amends the No. 1 Determination so that, rather than having to lodge a claim by 19 April 2020 in order to benefit from the modifications to the deemed date of claim provisions made by subsection 13(3B) and subsection 13(3C) of the Administration Act, claims can be lodged by relevant people up to and including 8 May 2020.

There continue to be high demands placed on Services Australia because of circumstances relating to COVID-19. Because it may be difficult for some people to lodge claims by 19 April 2020, the amendments made by this Schedule will allow people a longer period to lodge a claim with Services Australia while still benefitting from the deemed date of claim provisions.

Statement of Compatibility with Human Rights

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

Coronavirus Economic Response Package Omnibus Act 2020 Social Security (Coronavirus Economic Response—2020 Measures No. 9) 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

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

Item 40A of Schedule 11 to the Act allows the Minister to make a determination modifying the operation of the social security law relating to 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 and cannot operate after 31 December 2020.

The *Social Security (Coronavirus Economic Response—2020 Measures No. 1) Determination 2020* (No. 1 Determination) temporarily amended section 13 of the *Social Security (Administration) Act 1999* (Administration Act) to deem what date a person's claim for a social security payment is taken to be made if a person:

- made contact with Services Australia during the period 23 March 2020 to 29 March 2020; and
- lodges a claim with Services Australia by 19 April 2020.

The *Social Security (Coronavirus Economic Response—2020 Measures No. 9) Determination 2020* (this Determination) amends the No. 1 Determination so that, rather than having to lodge a claim by 19 April 2020 in order to benefit from the modifications to the deemed date of claim provisions introduced by the No. 1 Determination, claims can be lodged by relevant people up to and including 8 May 2020.

This Determination also provides for people who contact Services Australia during the period 30 March 2020 to 21 April 2020 in relation to a claim for a social security payment, to be taken to have made a claim on the contact day or the date of qualification, if later, provided they lodge a claim by 8 May 2020.

Human rights implications

This 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; and
- the rights of the child in article 26 of the Convention on the Rights of the Child.

Articles 9 and 11 are promoted by increasing the amount of social security a person can receive. This assists in achieving an adequate standard of living, in circumstances of a national health emergency. The pursuit of this objective also promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

This Determination promotes article 26 by enhancing the rights of the child to social security, as the payment is made to recipients with children. The payments are targeted at vulnerable groups who receive Government assistance and have a flow on effect for the children of recipients by increasing the support for families.

This Determination will potentially increase the cohort of people who will benefit from the deemed date of claim provisions inserted into the Administration Act by the No. 1 Determination and provide for a further group of people to benefit from the new deemed date of claim provisions inserted by the Determination. The deemed date of claims provisions will potentially increase social security payments for a person

affected by the provisions because the person's claim will be taken to have been lodged at a time before it was in fact lodged.

This Determination is entirely beneficial because some people will receive additional social security payments because of this Determination and no person will be disadvantaged by, or have their rights adversely affected by, this Determination.

Conclusion

This Determination is compatible with human rights because it promotes the protection of human rights for vulnerable groups in society.

Minister for Families and Social Services, Senator the Hon Anne Ruston

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