

EXPLANATORY STATEMENT

Social Security (Assurances of Support) (FaHCSIA) Determination 2007

Summary

This Determination is made under subsection 1061ZZGH(1) of the **Social Security Act 1991** (the Act) in relation to social security payments administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). This Instrument amends the former *Social Security (Assurances of Support) Determination 2004* (the 2004 Determination) made under this provision, taking into consideration the way in which social security payments are administered, as well as expanding the income test to include certain tax free income, recognising that assurances may cease to be in force in certain circumstances and simplifying the income test threshold.

Due to the administration of the social security law by FaHCSIA and the Department of Education, Employment and Workplace Relations (DEEWR) separate determinations are required in respect of the payments which each Department administers.

This Determination is relevant to the operation of the assurance of support provisions in Chapter 2C of the Act and commences on 1 January 2008.

Background

An assurance of support is a form of legal undertaking given by the assurer to repay to the Commonwealth the value of specified social security payments made to the migrant in respect of whom the assurance was given during the specified period of the assurance (2 or 10 years, depending on the migrant's visa).

An assurance of support is given by the assurer as part of the visa application process. In relation to certain visa subclasses, the *Migration Regulations 1994* require assurances of support to be given as a condition of grant of those visas (required assurances).

The *Migration Regulations 1994* also include the power for the Minister for Immigration and Citizenship (DIAC) to request that an assurance of support be given as a condition of grant of some other visa subclasses (discretionary assurances). The visa applied for cannot be granted if an assurance of support that has been requested in connection with the visa is not provided and found to be acceptable.

The Assurance of Support program allows migrants to come to Australia who do not meet the conditions for independent admission, while protecting the Commonwealth from the financial risks associated with providing social security payments. FaHCSIA has primary responsibility for achieving this outcome.

DIAC decides who must obtain an assurance by determining which visa needs an assurance as a condition of its grant. Centrelink, on behalf of FaHCSIA and DEEWR, administers the program. Centrelink decides whether to accept or reject the assurance and ensures that any recoverable payment made to the migrant during the period of the assurance is recovered from the assurer. Centrelink then transfers data about the acceptance or rejection of the assurance and any person covered by the assurance to DIAC.

The above arrangements involving DIAC and Centrelink have been in place since 1 July 2004, when the Government decided to transfer the administration of the program from DIAC to FaHCSIA under the ***Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*** (Schedule 3 of that Act), with a view to improving the integrity of the Assurance of Support program.

DIAC continues to determine which new migrants are subject to an assurance of support. However, once DIAC has made this decision, Centrelink is responsible for assessing a person's application for an assurance of support under the provisions of the social security law and administering the program on behalf of FaHCSIA and DEEWR. Centrelink continues to be responsible for the recovery of assurance of support debts.

The social security legislative framework for assurances of support includes determinations that the Minister is required to make under section 1061ZZGH of the Act to specify the following:

- (i) social security payments for the purposes of the definition of 'assurance of support' in sections 1061ZZGA and 1061ZZGG (these payments are specified in Part 2 of this Determination);
- (ii) requirements, for the purposes of section 1061ZZGB, that a person has to meet to be permitted to give an assurance of support (these requirements are specified in Part 3 of this Determination);
- (iii) requirements, for the purposes of paragraph 1061ZZGD(2)(a), that a person has to meet for the Secretary to accept the assurance given (these requirements are specified in Part 4 of this Determination);
- (iv) values of securities to be given as required under paragraph 1061ZZGD(3)(b) (these values are specified in Part 5 of this Determination); and
- (v) periods, for the purposes of subparagraph 1061ZZGF(1)(b)(i), for which assurances of support remain in force (these periods are specified in Part 6 of this Determination).

A determination under section 1061ZZGH is a legislative instrument for the purposes of the ***Legislative Instruments Act 2003***.

Explanation of the provisions

Part 1 Preliminary

Name of Determination

Section 1 states the name of this Determination as the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007*.

Commencement

Section 2 states that this Determination commences on 1 January 2008.

Interpretation

Section 3(1) defines the terms used in this Determination as follows:

'Act' means the *Social Security Act 1991*.

'adult' means a person who is 18 years of age or more.

'assessment', in relation to tax-related liability, has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1977*.

'assurance of support' has the meaning given by section 1061ZZGA of the Act. Section 1061ZZGA provides that assurance of support means an undertaking by a person under Chapter 2C of the Act that the person will pay the Commonwealth an amount of social security payments received by a person who was identified in the undertaking and who became a holder of a visa granted in connection with the undertaking. The social security payments relevant to the undertaking are the payments specified in a determination under section 1061ZZGH (in Part 2 of this Determination) at the time when the payments are received.

'australian resident' has the meaning given by subsection 7(2) of the Act.

'child' means a person who is under 18 years of age.

'current financial year' means the financial year during which the assurance of support is given by the assurer.

'first financial year' means the financial year ending immediately before the 'current financial year' in relation to a person who gives an assurance of support.

'primary criteria', in relation to a visa of a particular class, means the primary criteria set out in the relevant Part of Schedule 2 to the *Migration Regulations 1994* applicable to that class of visa.

‘secondary criteria’, in relation to a visa of a particular class, means the secondary criteria (if any) set out in the relevant Part of Schedule 2 to the *Migration Regulations 1994* applicable to that class of visa.

‘second financial year’ means the financial year ending immediately before the ‘first financial year’, in relation to a person who gives an assurance of support.

‘State’ includes the Australian Capital Territory and the Northern Territory.

‘State agency’ means the Crown in right of a State, a Minister of a State, a State Government Department or an instrumentality of a State, including a corporation established for a public purpose by or under a law of a State.

‘taxable income’ has the same meaning as in section 4-15 of the *Income Tax Assessment Act 1997*.

Subsection 3(2) provides that a reference in this Determination to a visa of a particular class is a reference to the visa of that class mentioned in Schedule 1 to the *Migration Regulations 1994*.

Purpose of Determination

Section 4 states that this Determination sets out things in relation to assurances of support that section 1061ZZGH of the Act requires the Minister to specify and amends the *Social Security (Assurances of Support) Determination 2004*.

Part 2 Social security payments

Social security payments

Section 5 of this Determination lists the social security payments that are relevant to the definition of ‘assurance of support’ in section 1061ZZGA, and to paragraph 1061ZZGG(1)(c) of the Act.

Section 1061ZZGA defines the term ‘assurance of support’ as an undertaking made by a person under Chapter 2C that the person will pay the Commonwealth an amount equal to the amount of a social security payment received throughout the period for which the undertaking is in force by a person identified in the undertaking who becomes the holder of a visa granted in connection with the undertaking. The period to which the undertaking applies, that is the period in respect of which liability to pay the social security amounts arises, is the period referred to in section 1061ZZGF and specified in Part 6 of this Determination.

Paragraph (b) of the definition of ‘assurance of support’ specifies that the undertaking to repay social security amounts relates to those social security payments that, when the payments are received, are specified in a determination made by the Minister for that purpose under new subsection 1061ZZGH(1), table item 1.

Subsection 1061ZZGG(1) specifies when the assurer's liability arises. The assurer's liability arises when an assurance is accepted under Chapter 2C and a person in respect of whom the assurance was given receives a social security payment in respect of the period during which the assurance is in force and, at the time the payment is received, the payment is specified in a determination under subsection 1061ZZGH(1). If these circumstances occur, the assurer is liable to pay the Commonwealth the amount of the social security payment. If the assurance is given by more than one person the liability of all of those persons is both joint and several.

For the purposes of the Assurance of Support program that was in place prior to 1 July 2004, the social security payments that give rise to an assurer's liability (in relation to visas granted before 1 July 2004 and continue to be in force) are specified in the *Migration Regulations 1994*, regulation 2.38.

Subsection 5(1) of this Determination specifies nine primary social security payments for the purposes of an assurer's liability arising in connection with an assurance given and accepted under the Act.

Subsection 5(2) specifies nine supplementary social security payments which are recoverable, where the primary social security payment listed in subsection (1) on which the supplementary payment is based is also recoverable for the purposes of an assurer's liability arising in connection with an assurance given and accepted under the Act.

Payments of pension supplement, rent assistance, remote area allowance and pharmaceutical allowance are also intended to be recoverable under the assurance of support program as part of the recoverable payment. These 'add-ons' have not been specifically listed in the Determination as they are not a payment in themselves but form part of the rate calculation for a person's primary social security payment.

Subsection 5(3) provides that section 5 applies only to the extent that the payments mentioned subsections (2) and (3) are the responsibility of the Minister for FaHCSIA.

Part 3 Requirements for persons to give assurances of support

Application of Part 3

Section 6 of this Determination states that Part 3 of this Determination specifies the requirements, for the purposes of section 1061ZZGB, that must be met in relation to a person for the person to be permitted to give an assurance.

Section 1061ZZGB of the Act provides that a 'person' may give an assurance of support. 'Person' is defined in section 22 of the **Acts Interpretation Act 1901** as including a body politic or corporate, as well as an individual. As a

result of the operation of section 1061ZZGI, an unincorporated body is also treated as a person and may give an assurance.

Section 1061ZZGB further provides that only a person who meets the requirements for giving assurances, specified in a determination made by the Minister under section 1061ZZGH, may give an assurance.

Item 2 of the table in subsection 1061ZZGH(1) requires the Minister to specify requirements to be met in relation to persons for them to be permitted to give assurances of support.

Requirements for individuals

Section 7 of this Determination specifies requirements for giving assurances of support applicable to individuals (a note at the end of subsection 7(1) informs the reader that under paragraph 22(1)(aa) of the **Acts Interpretation Act 1901** individual means a natural person).

Subsection 7(2) of the Determination provides that an individual must be an adult and an Australian resident. Subsection 3(1) defines 'adult' as a person who is 18 years of age or more. 'Australian resident' is defined in that subsection by reference to subsection 7(2) of the Act which provides that an Australian resident is a person who resides in Australia and is either an Australian citizen or the holder of a permanent visa or a special category visa holder who is a protected SCV (special category visa) holder. Special category visa holder is defined further in subsections 7(2A), (2B), (2C) and (2D) of the Act.

Under subsection 7(3), one individual may not assure more than two adults at the same time. Specifically, paragraph 7(3)(a) provides that an assurance may not be given in respect of an adult seeking assurance if the individual has previously given an assurance or assurances in respect of 2 adults that remain(s) in force. Paragraph 7(3)(b) provides that an assurance may not be given if the assurer has previously assured one adult and that assurance remains in force (subparagraph 7(3)(b)(i) refers) and has given an assurance in respect of a second adult which the Secretary has not yet decided to accept or reject the assurance (subparagraph 7(3)(b)(ii)). Paragraph 7(3)(c) provides that an assurance may not be given in respect of an adult seeking an assurance if the individual has previously given an assurance or assurances in respect of 2 adults and the Secretary has not yet decided whether to accept or reject those assurances.

A note at the end of subsection 7(3) informs the reader that there is no limit on the number of children one individual may assure.

If an assurance is given jointly with other persons, a maximum of three individuals may join as assurers of the same person. Specifically, subsection 7(4) provides that an individual may not give a joint assurance if this would result in assurances from more than 3 people being in force in respect of the same person.

The requirements specified are consistent with the requirements of the current Assurance of Support program.

Requirements for bodies

Section 8 of this Determination specifies requirements for giving assurances of support applicable to a person other than an individual, further referred to as a 'body'.

A body may give an assurance of support if the body is a State agency (paragraph 8(2)(a) refers). 'State agency' is defined in subsection 3(1). This requirement makes it possible for a State Government Department or a local council to give assurances of support. 'State' is defined in subsection 3(1) as including the Australian Capital Territory and the Northern Territory.

A body that is an unincorporated association may give an assurance if it has an address in Australia and intends to maintain that address while the assurance is in force (subparagraph 8(2)(b)(i) refers).

A body that is an incorporated association may give an assurance if it is incorporated in Australia and intends to remain so incorporated while the assurance is in force (subparagraph 8(2)(b)(ii) refers).

Under subsection 8(3), a body may not assure more than two adults at the same time. Specifically, paragraph 8(3)(a) provides that an assurance may not be given in respect of an adult seeking assurance if the body has previously given an assurance or assurances in respect of 2 adults that remain(s) in force. Paragraph 8(3)(b) provides that an assurance may not be given if the body has previously assured one adult and that assurance remains in force (subparagraph 8(3)(b)(i) refers) and has given an assurance in respect of a second adult which the Secretary has not yet decided to accept or reject the assurance (subparagraph 8(3)(b)(ii)). Paragraph 8(3)(c) provides that an assurance may not be given in respect of an adult seeking assurance if the body has previously given an assurance or assurances in respect of 2 adults and the Secretary has not yet decided whether to accept or reject those assurances.

Subsection 8(4) provides that a body must not give an assurance jointly with another body (that is, State agency or body as defined in subsection 3(1) of this instrument) or person.

Part 4 Requirements for Secretary to accept assurances of support

If an assurance of support is given by a person who meets the requirements specified in Part 3 of this Determination, the Secretary is permitted by paragraph 1061ZZGD(2)(a) of the Act to accept an assurance if the Secretary is satisfied that the person who gave the assurance meets the requirements for acceptance relating to the person specified in a determination made for this purpose by the Minister under section 1061ZZGH.

The relevant requirements for acceptance of assurances relate to the financial capacity of a person, or persons, giving an assurance of support to meet any financial liability that may arise as a result of the assurance. To test that capacity, this Determination sets out an income requirement that must be met by a person giving an assurance for the assurance to be accepted. The income requirement does not apply to assurances provided by a body or State agency.

Under the Assurance of Support program, a person who gives an assurance of support is required to demonstrate a sustained minimum income for one financial year prior to giving the assurance and in the financial year in which the assurance is given. The assessment of a person's capacity to provide an assurance of support and whether it meets the current threshold at the time of assessment must initially be assessed during the current financial year and then during either the preceding first or second financial years. The intention is that the threshold current at the time the delegate is determining a potential assurer's income is the threshold in the current financial year (ie the year the assessment is taking place). This current threshold applies in regard to assessing the assurer's income in either the preceding first or second financial years (as applicable), rather than the thresholds that would have applied in those previous financial years if the application had been made in one of those past periods. For example, if the relevant threshold is \$40,000 on the day the delegate makes the assessment in the current financial year, the assurer must have had income of \$40,000 not only for the current financial year but also for either the preceding first or second financial years (as applicable), despite that threshold having been lower in those previous financial years.

Generally, the model that applies is based on the minimum assessable income required by the assurer(s) to support themselves and adult assurees, which is the maximum annual basic rate for newstart allowance for a single person with dependant children multiplied by the number of assurers giving the assurance (up to a maximum of three assurers) and the number of adults who are the subject of the assurance (up to a maximum of two assurees).

If an assurer's family members includes children, the assurer's income threshold is increased by the annual base rate of Family Tax Benefit Part A (FTB Part A) plus the rate of FTB Part A supplement (as indexed) (paid under the *A New Tax System (Family Assistance) Act 1999*) (Family Assistance Act) for each of the assurer's children under 18 years of age. However, if one of the assuree's family members is 18 years or over, that family member will need to have a separate assurance of support.

No increases are required to the base amounts in respect of an assurer's partner.

An assurer's partner may give an assurance in his or her own right, subject to the requirements for giving and accepting assurance being met. Both members of a couple may jointly assure a person seeking assurance if each of them meets the relevant requirements for giving and accepting assurances.

Division 4.1 Requirements in relation to individuals

Application of Division 4.1

Section 9 of this Determination states that Division 4.1 of this Determination specifies the requirements, for the purposes of paragraph 1061ZZGD(2)(a), that must be met in relation to a person who is an individual, for the Secretary to be permitted to accept the assurance given by the person.

Definitions for Division 4.1

Section 10 defines several terms used in this Division as follows:

'applicable supplement amount' has the same meaning given by subclause 38A(2) of Schedule 1 to the Family Assistance Act.

'assessable income' of a person for a financial year includes the following:

- 'taxable income' (as defined in subsection 3(1));
- 'target foreign income';
- 'tax free pension or benefit';
- 'reportable fringe benefits total';
- tax free salary received during overseas deployment as a member of the Australian Defence Force or Australian Federal Police;

which meets the income threshold during a financial year for the person.

A person's assessable income is generally the person's taxable income for the financial year. In the event of a shortfall in meeting the required income threshold a person may use other income listed above. For example, Mr Smith is a Veterans' Affairs pensioner. He has taxable income from earnings and investments of \$25,000 annually. Mr Smith also receives an annual pension of \$15,000 from the Department of Veterans' Affairs (DVA) that is exempt from income tax under the ***Income Tax Assessment Act 1997***. Mr Smith's 'assessable income' for the purposes of the Assurance of Support income test is \$40,000: the sum of his taxable income and his non-taxable DVA pension.

'base FTB child rate' has the same meaning given by clause 8 of Schedule 1 to the Family Assistance Act (as defined below).

'Family Assistance Act' means the *A New Tax System (Family Assistance) Act 1999*.

'partner' is defined by reference to subsection 4(1) of the Act. In relation to a person who is a 'member of a couple', 'partner' means the other member of the couple.

'rate of newstart allowance' means the amount, as indexed at 1 July in each financial year, in column 3A of item 4A in Table B in section 1068-B1 of the Act.

'reportable fringe benefits total' has the same meaning given by clause 4 of Schedule 3 to the Family Assistance Act.

'single assurer' is defined as a person who gives an assurance other than jointly with another person or persons.

'target foreign income' has the same meaning given by subclause 5(1) of Schedule 3 to the Family Assistance Act.

'tax free pension or benefit' means a pension or benefit that is mentioned in clause 7 of Schedule 3 to the Family Assistance Act.

Meeting the income requirement

Section 11 imposes the income requirement which is based on the assessable income, during a financial year, of an individual who gives an assurance of support. Assessable income is defined in section 10. The intention is to allow the assurer's taxable income and certain non-taxable income to be considered as income for individuals giving an assurance.

An individual who gives an assurance must meet the income requirement applicable to the individual (subsection 11(1) refers). The income requirements for individuals are set out in sections 12 and 13 of this Determination.

Subsection 11(2) provides for the type of evidence that a person must provide to the Secretary to establish whether the person's assessable income meets the income requirement. This is subject to subsection 11(5).

The individual giving an assurance must meet the assessable income threshold, at the time of assessment, for the current financial year in which the assurance is given and for the second financial year where the individual does not have available evidence of assessable income for the first financial year (paragraph 11(2)(a) refers). As explained above, when assessing income in previous financial years, the income threshold that applies is that of the current financial year, rather than the threshold that would have applied in those past financial years if the visa applicant had applied for an assurance of support in that past period. Otherwise, the individual giving an assurance must meet the assessable income threshold, at the time of assessment, for the current financial year and for the first financial year (paragraph 11(2)(b) refers).

Under subsection 11(3), to establish that an individual meets the income requirement in respect of the individual's assessable income for the current financial year, the individual must give the Secretary acceptable evidence of their current income, which may include the following:

- a document showing the individual's gross income and period of service/employment (eg a payslip, group certificate, letter from the individual's employer, or contract for service or employment);
- a financial statement or other business record showing the individual's gross and net business income for a specified period; or
- documents showing payments as listed in paragraphs (b) to (e) as defined in section 10 that have been paid to the person in that financial year.

Subsection 11(4) provides that in order to establish that the individual meets the income requirement in respect of the individual's assessable income for the first or second financial years, the individual must give the Secretary a notice of assessment in relation to taxable income issued by the Australian Taxation Office (paragraph 11(4)(a) refers). If the notice of assessment does not disclose sufficient income to meet the income requirement in subsection 12(2) or 13(2) the individual must give the Secretary documents showing payments as listed in paragraphs (b) to (e) that have been paid to the person in that financial year (paragraph 11(4)(b) refers).

Subsection 11(5) provides that if a person's assessable income for a financial years exceeds the amount required under subsections 12(2) or 13(2), the person only needs to provide evidence of income that meets the income requirement. There is no further obligation to provide evidence of a person's assessable income that exceeds the income requirement.

The term 'assessment' in relation to taxable income is defined in subsection 3(1) by reference to subsections 995-1(1) of the ***Income Tax Assessment Act 1997***.

Income requirement – single assurer

Subsection 12(1) specifies the income requirement applicable to a single assurer giving an assurance.

The income requirement that an individual giving an assurance must meet in respect of each of the relevant income years (the current year and either the first or second previous income years, as specified in section 11) depends on the number and composition of the assurer's family and the number of adults seeking assurance.

Subsection 12(2) provides that the individual meets the income requirement for a financial year if the Secretary is satisfied that the amount of the individual's assessable income for that year is at least the total of the amounts specified in that subsection.

The term 'assessable income' is defined in section 10.

The total amount consists of:

- the applicable rate of newstart allowance for the current financial year (which is a constant value for all assurers to whom this section applies)

multiplied by the total number of adults giving the assurance (in this case, one) and the total number of adults receiving an assurance (up to a maximum of two assurees); and

- the amount of the base FTB child rate plus applicable supplement amount as at 1 July in the financial year for each child of the assurer's family under the assurance of support program.

The terms 'rate of newstart allowance', 'base FTB child rate' and 'applicable supplement amount' are defined in section 10.

An example at the end of section 12 illustrates how the income requirement (the total amount of assessable income that an assurer has to demonstrate for the assurance to be accepted) is calculated.

Income requirement – joint assurers

Subsection 13(1) specifies the income requirement applicable to joint assurers, that is, to an individual who gives an assurance of support jointly with other individuals.

Subsection 13(2) provides that the individual meets the income requirement for a financial year if the Secretary is satisfied that the combined amount of assessable income of all assurers for that year is at least the total of the amounts specified in that subsection.

The term 'assessable income' is defined in section 10.

The total amount consists of:

- the applicable rate of newstart allowance for the current financial year (which is a constant value for all assurers to whom this section applies) multiplied by the total number of adults giving the assurance (in this case, up to a maximum of three) and the total number of adults receiving an assurance (up to a maximum of two assurees); and
- the amount of the base FTB child rate plus applicable supplement amount as at 1 July in the financial year for each child of the assurer's family under the assurance of support program.

The terms 'rate of newstart allowance', 'base FTB child rate' and 'applicable supplement amount' are defined in section 10.

An example at the end of section 13 illustrates how the income requirement (the total amount of combined assessable income that joint assurers have to demonstrate for the assurance to be accepted) is calculated.

Division 4.2 Requirements in relation to persons other than individuals

Application of Division 4.2

Section 14 of this Determination states that Division 4.2 of this Determination specifies the requirements, for the purposes of paragraph 1061ZZGD(2)(a), that must be met in relation to a person who is not an individual (a body), for the Secretary to be permitted to accept the assurance given by the body.

Requirement for bodies

In relation to an assurance given by a body (which includes a State agency (see subsection 8(2) of this instrument)), subsection 15(1) requires that the assurance be given on behalf of the body or State agency by a person who is properly authorised to do so.

Subsection 15(2) provides that a body other than a State agency may only give an assurance of support that is secured by a bank guarantee or other form of guarantee from a financial institution.

The terms 'body', 'State agency' and 'State' are defined in subsection 3(1).

Part 5 Value of securities

Values of securities required for Secretary's acceptance of an assurance of support

Item 4 of the table in subsection 1061ZZGH(1) of the Act requires the Minister to specify values of securities that need to be given by an assurer for the assurance to be accepted by the Secretary.

In relation to certain visas, the *Migration Regulations 1994* require assurances of support to be given as a condition of grant of those visas. Under paragraph 1061ZZGD(3)(b) of the Act, the Secretary may only accept an assurance if an assurer has given the Secretary a single security for the liability that may be incurred by the assurer (an assurer is liable to repay the Commonwealth the amounts of social security payments made to the assured person during the period for which the assurance is in effect). The security must be of a value specified in a determination under subsection 1061ZZGH(1).

Under the current Assurance of Support program, a security is given in the form of a bond. The value of the bond currently required is specified in the *Migration Regulations 1994*, subregulation 2.39(4).

Section 16 of this Determination specifies the same values for the purposes of securities given under the Act in relation to an assurance given by an individual or State agency.

The value of the security to be given by an assurer (an individual or State agency) providing an assurance is as follows:

primary visa applicant for a parent visa

- a) if the assurance is given in connection with a Contributory Parent (Migrant) (Class CA) or Contributory Aged Parent (Residence) (Class DG) visa, in respect of a person identified in the assurance who is seeking to satisfy the primary criteria for grant of the visa, the value of the security is \$10 000;

secondary (dependent) visa applicant for a parent visa

- b) if the assurance is given in connection with a Contributory Parent (Migrant) (Class CA) or Contributory Aged Parent (Residence) (Class DG) visa, in respect of a person identified in the assurance who is seeking to satisfy the secondary criteria for grant of the visa, the value of the security is \$4 000;

primary visa applicant for other visas

- c) if the assurance is given in connection with a visa other than the parent visa specified above, in respect of a person identified in the assurance who is seeking to satisfy the primary criteria for grant of the visa, the value of the security is \$5,000;

secondary (dependent) visa applicant for other visas

- d) if the assurance is given in connection with a visa other than the parent visa specified above, in respect of a person identified in the assurance who is seeking to satisfy the secondary criteria for grant of the visa, the value of the security is \$2,000.

assurances given by bodies

- e) if the assurance is given by a body other than a State agency, the value (per assurance) of the security:
 - (i) if the assurance is for 2 years – \$10,000; or
 - (ii) if the assurance is for 10 years – \$20,000.

The terms 'primary criteria' and 'secondary criteria' are defined in subsection 3(1) of this Determination. The term 'primary criteria' means the primary criteria set out in the relevant Part of Schedule 2 to the *Migration Regulations 1994* applicable to a visa of a particular class. The term 'secondary criteria' means the secondary criteria (if any) set out in the relevant Part of Schedule 2 to the *Migration Regulations 1994* applicable to a visa of a particular class.

As required by subsection 1061ZZGH(3) of the Act, the Minister administering section 65 of the **Migration Act 1958** was consulted with regard to the values of securities required for Secretary's acceptance of an assurance of support.

Part 6 Effect of accepted assurances

Periods for which assurances of support remain in force

Section 1061ZZGF of the Act provides that an assurance comes into effect when the person for whom the assurance was given is granted a visa or enters Australia (whichever is the later) and remains in force for the period specified for this purpose in a determination under section 1061ZZGH.

For the purposes of the Assurance of Support program, the relevant periods, for the purposes of subparagraph 1061ZZGF(1)(b)(i), are specified in section 17 of this Determination.

Specifically, under section 17, if an assurance is given in connection with a Contributory Parent (Migrant) (Class CA) or Contributory Aged Parent (Residence) (Class DG) visa, the period for which the assurance remains in force is ten years. In any other case, the period is two years.

Circumstances in which assurances of support cease to be in force

Subparagraph 1061ZZGF(1)(b)(iii) provides that, if the Secretary determines a time at which an assurance ceases because of a circumstance specified in a determination under section 1061ZZGH, the assurance remains in force until that time. This is subject to that time being the earliest time under paragraph 1061ZZGF(1)(b).

Section 18 of this Determination, specifies the circumstances where an assurance of support ceases, for the purposes of subparagraph 1061ZZGF(1)(b)(iii). These circumstances are:

- if a person identified in an assurance of support is granted refugee status after his or her arrival in Australia (paragraph 18(a) refers);
- if a person identified in an assurance of support has his or her visa cancelled and the person is removed from Australia (paragraph 18(b) refers);
- if an assurance of support has been given to one person and that person dies (paragraph 18(c) refers);
- the following special circumstances that, in the opinion of the Secretary, justify cancellation of the assurance of support (paragraph 18(d) refers):

- an accident, disability, illness or other circumstance that has critically affected the assurer's ability to provide adequate support;
- the incapacity of a person identified in an assurance of support to travel to Australia before the expiration of a visa.

A note at the end of section 18 informs the reader that financial hardship on the part of an assurer will not, of itself, be considered a special circumstance.

Examples at the end of section 18 illustrate the types of circumstances where an assurance of support ceases.

As required by subsection 1061ZZGH(3) of the Act, the Minister administering section 65 of the ***Migration Act 1958*** was consulted with regard to the periods for which assurances of support remain in force.

Part 7 – Amendments to *Social Security (Assurances of Support) Determination 2004*

Amendments to Social Security (Assurances of Support) Determination 2004

Section 19 provides that the *Social Security (Assurances of Support) Determination 2004* (2004 Determination) is amended by Schedule 1.

Schedule 1 – Amendments to *Social Security (Assurances of Support) Determination 2004*

Clause 1 sets out a new termination provision and inserts section 2A after section 2 of the 2004 Determination. New section 2A provides that the 2004 Determination ceases to have effect on the earlier of:

- a) the day after registration of an instrument under subsection 1061ZZGH(1) of the Act made by any Minister responsible for the Education, Employment and Workplace Relations portfolio; or
- b) 1 January 2008, if an instrument mentioned in paragraph (a) is registered before that date.

Clause 2 sets out a new application provision and inserts section 4A after section 4 of the 2004 Determination. New section 4A provides that the 2004 Determination does not apply to matters that are the responsibility of the Minister for Families, Housing, Community Services and Indigenous Affairs.

Consultation

Consultation regarding the revocation of the 2004 Determination and remaking the 2007 Determination was undertaken with DEEWR to ensure a

co-ordinated approach to the administration of the assurance of support program in respect of payments under the Act for which they now have responsibility.

Consultation was also undertaken with the Minister for Immigration and Citizenship in relation to the values of securities and periods for which assurances remain in force, as required under subsection 1061ZZGH(3) of the Act.

The changes made to the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* are of a minor nature and do not substantially alter existing arrangements. The changes broaden the definition of income to allow for certain tax free income to be considered as income for the purpose of satisfying the income requirement for individuals, as well as covering taxable income, under the Assurance of Support program. The changes also clarify the assessment of the income test threshold. Neither of these changes adversely affects customers.

These changes do not alter the spirit of the relevant legislation. Public consultation was therefore seen as unnecessary.

Regulatory Impact Analysis

This instrument does not require a Regulatory Impact Statement (RIS) and/or a Business Cost Calculator Figure. This instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business.