



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

I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs acting under subsection 1061ZZGH (1) of the *Social Security Act 1991* make this Determination.

Dated 20 December 2007

J Macklin
Minister for Families, Housing, Community Services and Indigenous Affairs

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Section 1

Part 1 Preliminary**1 Name of Determination**

This Determination is the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007*.

2 Commencement

This Determination commences on 1 January 2008.

3 Interpretation

(1) In this Determination:

Act means the *Social Security Act 1991*.

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

assessment, for tax-related liability, has the meaning given by subsection 995-1 (1) of the *Income Tax Assessment Act 1997*.

assurance of support has the meaning given by section 1061ZZGA of the Act.

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

body means a person or group of persons, other than an individual.

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

current financial year, for a person who gives an assurance of support, means the financial year in which the assurance of support is given by the person.

first financial year, for a person who gives an assurance of support, means the financial year ending immediately before the current financial year.

primary criteria, for 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, for 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, for a person who gives an assurance of support, means the financial year ending immediately before the first financial year.

State includes the Australian Capital Territory and the Northern Territory.

State agency means any of the following:

- (a) the Crown in right of a State;
- (b) a Minister of a State;
- (c) a State Government Department;

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- (d) 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 meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

- (2) 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*.

4 Purpose of Determination

This Determination sets out the things that the Minister is required to specify under section 1061ZZGH of the Act for assurances of support and amends the *Social Security (Assurances of Support) Determination 2004*.

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Part 2 Social Security Payments

5 Social security payments

- (1) For paragraph (b) of the definition of *assurance of support* in section 1061ZZGA of the Act and for paragraph 1061ZZGG (1) (c) of the Act, the social security payments in the following table are specified:

Item	Social security payment
1	Widow allowance under Part 2.8A of the Act
2	Parenting payment under Part 2.10 of the Act
3	Youth allowance under Part 2.11 of the Act
4	Austudy payment under Part 2.11A of the Act
5	Newstart allowance under Part 2.12 of the Act
6	Mature age allowance under Part 2.12A or 2.12B of the Act
7	Sickness allowance under Part 2.14 of the Act
8	Special benefit under Part 2.15 of the Act
9	Partner allowance under Part 2.15A of the Act

- (2) If a social security payment (*primary payment*) mentioned in the table in subsection (1) has been made, the supplementary social security payments mentioned in the following table, made because of a primary payment, are also specified:

Item	Supplementary social security payment
1	Approved program of work supplement under Part 2.10, 2.11 or 2.12 of the Act
2	Employment entry payment under Part 2.13 of the Act
3	Education entry payment under Part 2.13A of the Act
4	Language, literacy and numeracy supplement under Part 2.21A of the Act
5	Crisis payment under Part 2.23A of the Act
6	Pensioner education supplement under Part 2.24A of the Act
7	Telephone allowance under Part 2.25 of the Act
8	Utilities allowance under Part 2.25A of the Act
9	Fares allowance under Part 2.26 of the Act

- (3) This section applies to the extent that the payments mentioned in subsections (1) and (2) are the responsibility of the Minister.

Part 3 Requirements for persons to give assurances of support

6 Application of Part 3

For section 1061ZZGB of the Act, this Part specifies the requirements that must be met for a person to be permitted to give an assurance of support.

7 Requirements for individuals

- (1) This section specifies the requirements that must be met by an individual.

Note **Individual** means a natural person — see paragraph 22 (1) (aa) of the *Acts Interpretation Act 1901*.

- (2) The person must be:
- (a) an adult; and
 - (b) an Australian resident.
- (3) The person may not give an assurance of support for an adult if:
- (a) the person has previously given an assurance for 2 adults (whether in a single assurance or 2 separate assurances) and each assurance remains in force; or
 - (b) the person has previously given an assurance of support for:
 - (i) 1 adult and that assurance remains in force; and
 - (ii) 1 adult for whom the Secretary has not yet accepted or rejected the assurance; or
 - (c) the person has given an assurance for 2 adults (whether in a single assurance or 2 separate assurances) and the Secretary has not yet accepted or rejected either or both of those assurances.

Note There are no restrictions on the number of children for whom a person may give an assurance of support.

- (4) The person may not give an assurance jointly with another person, or persons, for a person (the **assured**) if acceptance of the assurance would result in assurances from more than 3 people being in force for the assured.

8 Requirements for bodies

- (1) This section specifies the requirements that must be met by a body.
- (2) The body must:
- (a) be a State agency; or

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- (b) for other bodies — meet the following requirements:
 - (i) if the body is an unincorporated association — have an address in Australia and intend to maintain an address in Australia while any assurance of support given by the body remains in force;
 - (ii) if the body is an incorporated association — be incorporated in Australia (within the meaning of the *Corporations Act 2001*) and intend to remain incorporated in Australia while any assurance of support given by the body remains in force.
 - (3) The body may not give an assurance of support for an adult if:
 - (a) the body has previously given an assurance for 2 adults (whether in a single assurance or 2 separate assurances) and each assurance remains in force; or
 - (b) the body has previously given an assurance of support for:
 - (i) 1 adult and that assurance remains in force; and
 - (ii) 1 adult for whom the Secretary has not yet accepted or rejected the assurance; or
 - (c) the body has given an assurance for 2 adults (whether in a single assurance, or 2 separate assurances) and the Secretary has not yet accepted or rejected either or both of those assurances.
- Note* There are no restrictions on the number of children for whom a person may give an assurance of support.
- (4) A body must not give an assurance of support jointly with another body or person.

Part 4 Requirements for Secretary to accept assurances of support

Division 4.1 Requirements for individuals

9 Application of Division 4.1

For paragraph 1061ZZGD (2) (a) of the Act, this Division specifies the requirements that must be met for a person who is an individual who gives an assurance of support to permit the Secretary to accept the assurance.

10 Definitions for Division 4.1

In this Division:

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

assessable income, of a person for a financial year, includes:

- (a) the person's taxable income for the financial year; and
- (b) the person's target foreign income for the financial year; and
- (c) the total amount of any tax free pension or benefit paid or payable to the person in the financial year; and
- (d) the person's reportable fringe benefits total for the financial year; and
- (e) any tax free salary received by the person during overseas deployment as a member of the Australian Defence Force or Australian Federal Police for the financial year.

base FTB child rate has the meaning given by clause 8 of Schedule 1 to the Family Assistance Act.

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

partner has the meaning given by subsection 4 (1) of the Act.

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

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

single assurer means a person who gives an assurance other than jointly with another person or persons.

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

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

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11 Meeting the income requirement

- (1) A person who gives an assurance of support must meet the income requirement.
- (2) Subject to subsection (5), the income requirement is about providing evidence acceptable to the Secretary about the person's assessable income for each of the following:
 - (a) if the person does not have available evidence of assessable income for the first financial year — the current financial year, and the second financial year;
 - (b) otherwise — the current financial year and the first financial year.
- (3) For the current financial year, the person must provide evidence about the person's assessable income for the part of the financial year up to the date on which the assurance is given, which may include the following:
 - (a) a document showing the person's gross income and period of service or employment, such as a payslip, group certificate, letter from the person's employer, or contract for service or employment;
 - (b) a financial statement or other business record showing the person's gross and net business income for a specified period;
 - (c) documents showing payments of the kind mentioned in paragraphs (b) to (e) of the definition of *assessable income* in section 10 that have been paid to the person in the current financial year.
- (4) For each of the first and second financial years, the person must provide the following evidence:
 - (a) a notice of assessment issued by the Australian Taxation Office in relation to the person and the year;
 - (b) if the notice of assessment does not disclose sufficient income to satisfy the income requirement in subsection 12 (2) or 13 (2), documents showing payments of the kind mentioned in paragraphs (b) to (e) of the definition of *assessable income* in section 10 that have been paid to the person in that financial year.
- (5) If a person's assessable income for a financial year exceeds the amount required by subsection 12 (2) or 13 (2) (the *relevant amount*), the person need only provide evidence of the relevant amount of that income.

12 Income requirement — single assurer

- (1) This section applies to a single assurer.
- (2) The person meets the income requirement for a financial year if the Secretary is satisfied that the amount of the person's assessable income for the year is at least the total of:
 - (a) the applicable rate of newstart allowance multiplied by the total of:
 - (i) one (representing the person giving assurance under the assurance of support); and

- (ii) the total number of adults receiving assurance under an assurance of support given by the person; and
- (b) the amount obtained by adding together, for each child of the person giving assurance under an assurance of support:
 - (i) the base FTB child rate as at 1 July in the financial year; and
 - (ii) the applicable supplement amount as at 1 July in the financial year.

Example

If a person with 2 children applies to give an assurance of support for a migrating family of 2 parents and 2 children, the minimum required income amount of the person is the total of:

- \$35 793 (the applicable newstart allowance of \$11 931 multiplied by the total number of adult assurers and adult assurees (3)); and
- the base FTB child rate and the applicable supplement amount for each of the assurer's children.

The base FTB child rate and the applicable supplement are only added to the income requirement for the assurer's children. They do not apply to the children of the assurees.

13 Income requirement — joint assurers

- (1) This section applies to a person who gives an assurance of support jointly with another person or persons.
- (2) The person meets the income requirement for a financial year if the Secretary is satisfied that the combined amount of assessable income of the assurers for the year is at least the total of the following amounts:
 - (a) the applicable rate of newstart allowance multiplied by the total of:
 - (i) the total number of persons giving assurance under the assurance of support; and
 - (ii) the total number of adults receiving assurance under an assurance of support given by the person; and
 - (b) the amount obtained by adding together, for each child of a person giving assurance under the assurance of support:
 - (i) the base FTB child rate as at 1 July in the financial year; and
 - (ii) the applicable supplement amount as at 1 July in the financial year.

Example

If a joint assurer (who has a partner and 2 children) gives an assurance of support with the partner for a migrating family of 2 parents and 2 children, the combined minimum required income of both assurers is the total of :

- \$47 724 (the applicable newstart allowance of \$11 931 multiplied by the total number of adult assurers and adult assurees (4)); and
- the base FTB child rate and the applicable supplement amount for each of the assurers' children.

The base FTB child rate and the applicable supplement are only added to the income requirement for the assurers' children. They do not apply to the children of the assurees.

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Division 4.2 Requirements for bodies

14 Application of Division 4.2

For paragraph 1061ZZGD (2) (a) of the Act, this Division specifies the requirements that must be met for a body that gives an assurance of support to permit the Secretary to be permitted to accept the assurance.

15 Requirements for bodies

- (1) An assurance of support that is given by a body must be given on behalf of the body by a person who is properly authorised to give the assurance.
- (2) A body other than a State agency may only give an assurance of support that is secured by bank guarantee or other form of guarantee from a financial institution.

Part 5 Value of securities

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

For paragraph 1061ZZGD (3) (b) of the Act, the following values for a security are specified:

- (a) for an assurance of support for an application for a Contributory Parent (Migrant) (Class CA) visa or a Contributory Aged Parent (Residence) (Class DG) visa, for a person identified in the assurance seeking to satisfy the primary criteria for the grant of the visa — \$10 000;
- (b) for an assurance of support for an application for a visa of the kind mentioned in paragraph (a), for a person identified in the assurance seeking to satisfy the secondary criteria for the grant of the visa — \$4 000;
- (c) for an assurance of support for an application for a visa other than the kind mentioned in paragraph (a), for a person identified in the assurance seeking to satisfy the primary criteria for the grant of the visa — \$5 000;
- (d) for an assurance of support for an application for a visa other than the kind mentioned in paragraph (a), for a person identified in the assurance who is seeking to satisfy the secondary criteria for the grant of the visa — \$2 000;
- (e) for an assurance of support given by a body other than a State agency:
 - (i) if the assurance is for 2 years — \$10 000; or
 - (ii) if the assurance is for 10 years — \$20 000;

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Part 6 Effect of accepted assurances**17 Periods for which assurances of support remain in force**

For subparagraph 1061ZZGF (1) (b) (i) of the Act, the following periods are specified:

- (a) for an assurance of support for a Contributory Parent (Migrant) (Class CA) visa or a Contributory Aged Parent (Residence) (Class DG) visa — 10 years;
- (b) in any other case — 2 years.

18 Circumstances in which assurances of support cease to be in force

For subparagraph 1061ZZGF (1) (b) (iii) of the Act, the following circumstances are specified:

- (a) after arrival in Australia, a person identified in an assurance of support is granted refugee status;
- (b) the visa of a person identified in an assurance of support is cancelled.
- (c) a person is the only person identified in an assurance of support and the person dies;
- (d) the following special circumstances that, in the opinion of the Secretary, justify cancellation of an assurance of support:
 - (i) an accident, disability, illness or other circumstance that has critically affected the assurer's ability to provide adequate support;
 - (ii) the incapacity of a person identified in an assurance of support to travel to Australia before the expiration of a visa.

Note Financial hardship on the part of an assurer will not, of itself, be considered a special circumstance.

Example 1

A person has provided a 10 year assurance for their mother to come to Australia from China. Shortly after the mother's visa was granted she was diagnosed with a terminal illness and advised by her medical practitioner that travel outside China would be impossible for the foreseeable future. The mother has requested that the assurance of support be cancelled and the \$10 000 security refunded.

Cancellation is likely to be granted in this case.

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A person (the *assurer*) with an income of approximately \$40 000 has provided a 2 year assurance for his unemployed brother's prospective spouse. One year after the assuree's arrival in Australia, the assurer bought a more expensive home with a higher mortgage repayment. Also, his wife has had a baby and he has ceased paid employment. He is no longer in a position to provide any financial support for the assuree, who has approached Centrelink for assistance. The assurer has requested that the assurance of support be cancelled in view of his increased financial and family commitments.

Cancellation is unlikely to be granted in this case. It is the assurer's responsibility to manage his financial affairs and meet any social security debts incurred by the assuree.

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Part 7 **Amendments to Social Security
(Assurances of Support)
Determination 2004****19** **Amendments to Social Security (Assurances of Support)
Determination 2004**

The *Social Security (Assurances of Support) Determination 2004* is amended by Schedule 1.

Schedule 1 **Amendments to Social Security
(Assurances of Support)
Determination 2004****[1]** **After section 2**

insert

2A **Termination**

This Determination ceases to have effect on the earlier of:

- (a) the day after registration of an instrument under subsection 1061ZZGH (1) of the *Social Security Act 1991* made by any Minister responsible for the Education, Employment and Workplace Relations; portfolio; or
- (b) if an instrument mentioned in paragraph (a) is registered before 1 January 2008 — 1 January 2008.

[2] **After section 4**

insert

4A **Application**

This Determination does not apply to matters that are the responsibility of the Minister.