

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Amendment Determination 2015

Purpose

The purpose of this Determination is to exempt holders of a Subclass 060 (Bridging F) visa from the newly arrived resident’s waiting period (NARWP) for special benefit.

Background

A person may be qualified for special benefit if, among other things, they are an Australian resident or the holder of a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991* (the Act). The *Social Security (Class of Visas – Qualification for Special Benefit) Amendment Determination 2015* amends the *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2015 (No. 2)* to determine Subclass 060 (Bridging F) as a class of visa for the purposes of subparagraph 729(2)(f)(v) of the Act.

Subsection 739A(1) of the Act provides that subject to some exceptions, certain persons are subject to a NARWP. This includes a person who enters Australia (paragraph 739A(1)(a)).

Subsection 739A(6) of the Act provides that the NARWP in subsection 739A(1) does not apply if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister, by legislative instrument, for the purposes of subsection 739A(6).

The *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2015 (No. 2)* (the 2015 Determination) determines a number of different visa classes for the purposes of subsection 739A(6) of the Act. This Determination amends the 2015 Determination to add Subclass 060 (Bridging F) to the 2015 Determination.

From 1 January 2016, changes will be made to the Human Trafficking Visa Framework. As part of those changes, Subclass 060 (Bridging F) visa has been redesigned and that visa will be granted exclusively to suspected victims of trafficking in persons, slavery or slavery-like practices.

Before these changes to the Human Trafficking Visa Framework, victims of human trafficking were granted criminal justice stay visas (CJSVs) while assisting authorities with a criminal justice process. The 2015 Determination determines CJSVs as a class of visa for the purposes of subsection 739A(6) of the Act if the visa was granted for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery-like practices. CJSVs will

continue to be determined in the 2015 Determination but it is intended the holders of those visas who are the victims of human trafficking will be gradually transferred to a Subclass 060 (Bridging F) visa.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend such instrument.

Commencement

This Determination commences on 1 January 2016.

Consultation

The Department of Immigration and Border Protection was consulted on this Determination and they provided guidance on the new Human Trafficking Visa Framework.

Public consultation was considered unnecessary because this Determination is administrative in nature to recognise that victims of trafficking in persons, slavery and slavery-like practices will now be granted Subclass 060 (Bridging F) visas, not CJSVs, while assisting authorities with a criminal justice process.

Regulation Impact Statement (RIS)

This Determination does not require a Regulation Impact Statement because the Determination is not regulatory in nature, will not impact on business activity and will have no or minimal compliance costs or competition impact.

Explanation of the provisions

Section 1

This section provides how the Determination is to be cited, that is, as the *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Amendment Determination 2015*.

Section 2

This section provides that the Determination commences on 1 January 2016.

Section 3

Section 3 provides that Schedule 1 amends the 2015 Determination.

Schedule 1

Schedule 1 amends the 2015 Determination by inserting a new paragraph 6(1)(aa). New paragraph 6(1)(aa) contains a reference to Subclass 060 (Bridging F) in the 2015 Determination. The effect of this is that Subclass 060 (Bridging F) is a class of visa for the purposes of subsection 739A(6) of the Act. This means that a NARWP

for special benefit does not apply to the holder, or former holder, of a Subclass 060 (Bridging F) visa.

Statement of Compatibility with Human Rights

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

Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Amendment Determination 2015

The *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Amendment Determination 2015* 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 *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Amendment Determination 2015* is made under subsection 739A(6) of the *Social Security Act 1991*.

The purpose of this Determination is to exempt the holders of a Subclass 060 (Bridging F) visa from the 104-week newly arrived resident’s waiting period for Special Benefit. This will ensure that a Subclass 060 (Bridging F) visa holder who meets the payment eligibility criteria for Special Benefit may be paid immediately subsequent to the grant of a Subclass 060 (Bridging F) visa.

Human rights implications

This Determination engages or gives effect to the following human rights:

- the right to social security contained in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 11(1)(e) and 14(2)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD); and
- the right to an adequate standard of living contained in Article 11(1) of the ICESCR, Article 14(2)(h) of the CEDAW and Article 28 of the CRPD.

The Determination will assist Australia to meet its international obligations under the ICESCR, the CEDAW and the CRPD by providing an exemption to the waiting period in which a Subclass 060 (Bridging F) visa holder qualifies for Special Benefit. The Determination will also ensure an adequate standard of living for those who are granted a Subclass 060 (Bridging F) visa and require financial assistance by providing immediate access to social security payments.

Conclusion

This Determination is compatible with human rights as it promotes the right to social security and an adequate standard of living for holders of a Subclass 060 (Bridging F) visa.

The Hon Christian Porter MP, Minister for Social Services