

EXPLANATORY STATEMENT

Social Security (Class of Visas – Qualifying Residence Exemption) Determination 2016

Purpose

The purpose of this Determination is to determine classes of visas, such that a person who holds or was the former holder of a visa in a determined class has a qualifying residence exemption under subsection 7(6AA) of the *Social Security Act 1991* (the Act) for a social security benefit (other than a special benefit), a pension Parenting Payment (single), carer payment, a mobility allowance, a seniors health card or a health care card.

Background

In general, a person is subject to a newly arrived resident's waiting period for a social security benefit (other than a special benefit), a pension Parenting Payment (single), carer payment, a mobility allowance, a seniors health card or a health care card. No such waiting period applies if a person has a qualifying residence exemption.

Paragraph 7(6AA)(f) of the Act provides that a person has a qualifying residence exemption if the person holds, or was the former holder of, a visa that is in a class of visas determined, by legislative instrument, by the Minister for the purposes of that paragraph.

The *Social Security (Class of Visas – Qualifying Residence Exemption) Determination 2015* (2015 Determination) currently determines visas for the purposes of paragraph 7(6AA)(f) of the Act. This Determination revokes and replaces the 2015 Determination to retain the Subclass 852 (Referred Stay (Permanent)) visa and remove visa classes that are no longer eligible for exemption under the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997*. The exemption for family members of Australian citizens and permanent residents no longer applies.

A Subclass 852 (Referred Stay (Permanent)) visa may be granted to a person who made a contribution to, and cooperated closely with, an investigation or prosecution of a person who was alleged to have engaged in human trafficking, slavery or slavery-like practices, and would be in danger if he or she returned to his or her home country.

Access to Special Benefit will still be available for a newly arrived permanent resident who has suffered a substantial change in their circumstances, beyond their control, and are in financial hardship, after arrival. There remains no waiting period for family assistance payments for families with children, such as Family Tax Benefit.

Section 1 of the Determination states the name of the Determination.

Section 2 provides that the Determination commences on 1 January 2017.

Section 3 revokes the 2015 Determination.

Section 4 provides that the authority for making this Determination is paragraph 7(6AA)(f) of the Act.

Section 5 determines classes of visas for the purposes of paragraph 7(6AA) (f) of the Act. The class of visas is Subclass 852 (Referred Stay (Permanent)).

Consultation

The Department of Human Services was consulted as part of preparing this Determination. The Department of Immigration and Border Protection was consulted to assist with ensuring that the visa classes determined by this Determination are correct and current.

Regulatory Impact Analysis

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

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 – Qualifying Residence Exemption) Determination 2016

The *Social Security (Class of Visas – Qualifying Residence Exemption) Determination 2016* 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*.

The effect of this Determination is to grant a qualifying residence exemption for a social security benefit (other than a special benefit), a pension PP (single), carer payment, a mobility allowance, a seniors health card or a health care card to the holders of a Subclass 852 (Referred Stay (Permanent)) 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 a qualifying residence exemption for a range of social security payments to Subclass 852 (Referred Stay (Permanent)) visa holders. The Determination will also ensure an adequate standard of living for those who are granted a Subclass 852 (Referred Stay (Permanent)) visa and require appropriate financial assistance by providing more immediate access to social security payments.

Access to Special Benefit will still be available for a newly arrived permanent resident who has suffered a substantial change in their circumstances, beyond their control, and are in financial hardship, after arrival. There remains no waiting period for family assistance payments for families with children, such as Family Tax Benefit.

Conclusion

This Determination is compatible with human rights as it promotes the right to social security and an adequate standard of living for Subclass 852 (Referred Stay (Permanent)) visa holders.

The Hon Christian Porter MP, Minister for Social Services