

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Assurances of Support) Determination 2018

Purpose

An assurance of support, under Chapter 2C of the *Social Security Act 1991* (the Act), is an undertaking by a person (individual or body) (the assurer) to repay the Commonwealth an amount equal to the amount of specified social security payments that is received in respect of a period by another person (the assuree) who is:

- identified in the assurance of support; and
- becomes the holder of a visa (under the *Migration Act 1958*) granted in connection with the undertaking.

Subsection 1061ZZGH(1) of the Act provides that the Minister must, by legislative instrument, make a determination specifying the following matters:

- social security payments for the purpose of the definition of assurance of support in sections 1061ZZGA and 1061ZZGG of the Act;
- requirements to be met for persons (individual or body) to be permitted by section 1061ZZGB to give assurances of support;
- requirements to be met in relation to persons giving assurances of support for the Secretary to be permitted by subsection 1061ZZGD(2) to accept such assurances;
- values of securities to be given for the Secretary to be permitted to accept assurances of support under paragraph 1061ZZGD(3)(b) of the Act;
- periods for which assurances of support accepted under Chapter 2C of the Act remain in force in respect of persons under section 1061ZZGF of the Act; and
- circumstances in which assurances of support accepted under Chapter 2C cease to be in force (subparagraph 1061ZZGF(1)(b)(iii) of the Act).

The *Social Security (Assurances of Support) Determination 2018* (the Determination) specifies matters for the purpose of subsection 1061ZZGH(1) of the Act. The matters in subsection 1061ZZGH(1) of the Act were previously specified in the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* (the FaHCSIA Determination) and the *Social Security (Assurances of Support) (DEEWR) Determination 2008* (the DEEWR Determination). This Determination will replace both the FaHCSIA Determination and the DEEWR Determination which would otherwise sunset on 1 April 2018.

Background

The primary objective of the assurance of support scheme is to protect social security outlays by the Commonwealth while allowing the migration of people who might not otherwise be permitted to come to Australia. Visa applicants with a high likelihood of requiring income support from the Commonwealth are permitted to migrate to Australia on the condition that an assurer assumes:

- the provision of financial support to the assuree for the duration of the assurance of support period so that the assuree will not have to rely on social security payments; and
- responsibility for the repayment to the Commonwealth of specified social security payments received by the assuree during the assurance of support period.

An assurance of support is given by an assurer as part of the visa application process. For certain visa subclasses, the *Migration Regulations 1994* (the Migration Regulations) require an assurance of support to be given as a condition of grant of the visa. These are mandatory assurances of support. For a mandatory assurance of support, the assurer must lodge a financial security for the required amount.

The Migration Regulations are disallowable legislative instruments. A reference to them is a reference to them as in force from time to time.

For some visa subclasses, the Migration Regulations allow the Minister for Home Affairs to request an assurance of support as a condition of grant. These are discretionary assurances of support. Where, in connection with a visa application, an assurance of support has been requested by the Minister for Home Affairs, the assurance of support must be in force in order for the visa to be granted. For a discretionary assurance of support, lodgement of a financial security is not required.

Social security payments for the purpose of the definition of assurance of support include: widow allowance, parenting payment, youth allowance, austudy payment, newstart allowance, mature age allowance, sickness allowance, special benefit and partner allowance.

The period of an assurance of support may be 10 years (for a Contributory Parent (Migrant) (Class CA) visa or Contributory Aged Parent (Residence) (Class DG) visa), 12 months (for a Community Support Programme entrant) or 2 years (in any other case).

Key changes in this Determination include specifying an assurance of support requirement for Community Support Programme (CSP) entrants. The CSP was developed by the Department of Home Affairs and announced as part of the 2017-18 Budget. The CSP is intended to reduce costs to the Commonwealth by allowing entrants on a Global Special Humanitarian visa (subclass 202) to be sponsored by individuals, community organisations or businesses through approved proposing organisations for their settlement in Australia. Sponsors are responsible for providing

adequate financial and in-kind support to the CSP entrants for up to 12 months after arrival in Australia.

Income requirements have also been updated generally to ensure that an assurer has capacity to provide the level of financial support required by a visa entrant or a CSP entrant.

From 1 April 2019, there will be an increase in the value of a security to be given by an assurer for the purposes of an assurance of support (see Part 7 of this Determination). The delay in imposing these increases is to ensure that applicants are given sufficient notice of the proposed changes.

Commencement

Parts 1 to 6, Part 8 and the Schedules to the Determination commence on 1 April 2018. Part 7 of the Determination will commence on 1 April 2019.

Consultation

The Minister responsible for the *Migration Act 1958* has been consulted on matters to be specified in the instrument, as required by section 1061ZZGH(3) of the Act. The Department of Home Affairs and the Department of Human Services have also been consulted.

Further consultation was not considered necessary as the Determination is operating efficiently and effectively.

Regulation Impact Statement (RIS)

OBPR ID 23503

Consistent with the OBRP Guidance Note on Sunsetting Legislative Instruments the Deputy Secretary of Department of Social Services certified the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* as operating effectively and efficiently. Therefore a Regulation Impact Statement is not required for this regulation to be remade.

Explanation of the provisions

Part 1 – Preliminary

Section 1

This section provides that the instrument is the *Social Security (Assurances of Support) Determination 2018*.

Section 2

This section provides for the commencement of the Determination. Parts 1 to 6, Part 8 and Schedules 1 and 2 commence on 1 April 2018. Part 7 will commence on 1 April 2019.

Section 3

This section provides that the Determination is made under section 1061ZZGH of the *Social Security Act 1991*.

Section 4

This section specifies that Schedules 1 and 2 respectively revoke the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* and the *Social Security (Assurances of Support) (DEEWR) Determination 2008*. These two determinations would otherwise sunset on 1 April 2018.

Section 5

This section contains definitions of the terms used in this Determination.

The note identifies a number of terms defined in the *Social Security Act 1991*, including *Australian resident* and *partner*.

A reference to ‘the Act’ is a reference to the *Social Security Act 1991*.

The term ‘*adult*’ means a person who is 18 years of age or more.

The definition of ‘*approved proposing organisation*’ has the meaning given by clause 202.111 of Schedule 2 to the *Migration Regulations 1994* (for the purposes of a Global Special Humanitarian Visa (subclass 202)).

The definition of ‘*assessable income*’ of an individual for a financial year means the total of:

- (a) the individual’s taxable income for the financial year; and
- (b) the individual’s target foreign income for the income year; and
- (c) the total amount of any tax free pension or benefit paid or payable to the individual for the financial year; and
- (d) the individual’s adjusted fringe benefits total for the financial year; and

- (e) any tax free salary paid for services that occurred during the financial year while the individual was on overseas deployment as a member of the Australian Defence Force or Australian Federal Police.

The definition of '*assurance of support*' has the meaning given by section 1061ZZGA of the Act.

The definition of '*body*' means:

- (a) a person (other than an individual); or
- (b) a group of individuals or other persons.

Note 1 clarifies that the expression used to denote 'persons' generally (such as 'person') include a body politic or corporate as well as individual (see section 2C of the *Acts Interpretation Act 1901* (Acts Interpretation Act)). Note 2 clarifies that 'individual' means a natural person (see section 2B of the Acts Interpretation Act). The example clarifies that paragraph of the definition of 'body' includes an unincorporated body (such as, a society or association).

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

The definition of '*Community Support Programme entrant*' means an adult applicant for a Global Special Humanitarian Visa (subclass 202) if the visa application includes a proposal by an approved proposing organisation. It does not include a child applicant.

The definition of '*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.

A reference to the Family Assistance Act is a reference to the *A New Tax System (Family Assistance) Act 1999*.

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

The definition of '*newstart income cut-off amount*' means the amount of ordinary income of a person beyond which the rate of newstart allowance would be reduced to nil.

The definition '*notice of assessment*' means a notice of assessment issued under the *Income Tax Assessment Act 1936*.

The definitions of '*primary criteria*' and '*secondary criteria*' have the same meaning as the criteria (if any) set out in the relevant Part of Schedule 1 or 2 to the Migration Regulations applicable to the class of visa that is subject to an assurance of support.

The definition of '*rate of newstart allowance*' means the amount of newstart allowance payable as calculated by reference to the maximum basic rate 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.

The definitions of '*adjusted fringe benefits total*', '*target foreign income*', and '*tax free pension or benefit*' have the same meaning as in the Family Assistance Act. The definition of '*second financial year*', for a person who gives an assurance of support, means the financial year ending immediately before the first financial year.

The definition of '*single assurer*' means an assurer who gives an assurance of support other than jointly with another person or persons. "Assurer" is a term which is used in the Act (see, for example, sections 1061ZZGE, 1061ZZGG and 1061ZZGH) and has the same meaning in the Determination as it has in the Act.

The definition of '*State*' includes the Australian Capital Territory and the Northern Territory.

The definition of '*State agency*' means any of the following:

- (a) the Crown in the right of a State;
- (b) a Minister of a State;
- (c) A State Government Department;
- (d) An instrumentality of a State, including a corporation established for a public purpose by or under a law of a State.

The definition of '*taxable income*' has the same meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

The definition of '*visa entrant*' means an adult applicant for a visa other than a Community Support Programme entrant. It does not include a child applicant.

Subsection 5(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.

Subsection 5(3) provides that a reference in this Determination to a visa of a particular subclass is a reference to the visa of that subclass mentioned in Schedule 2 to the Migration Regulations.

Part 2 – Social security payments

Section 6

This section specifies the social security payments that are relevant to the definition of 'assurance of support' in paragraph (b) of section 1061ZZGA and paragraph 1061ZZGG(1)(c) of the Act.

Subsection 1061ZZGA(a) of the Act defines the term 'assurance of support' as an undertaking made by the assurer to pay the Commonwealth an amount equal to the amount of a social security payment received by the assuree who is identified in the undertaking throughout the period for which the undertaking is in force and who becomes the holder of a visa granted in connection with the undertaking. Subsection 1061ZZGA(b) of the Act provides that the undertaking to repay social security amounts relates to those social security payments that are specified in a determination made by the Minister under subsection 1061ZZGH(1) of the Act.

Section 1061ZZGG(1) of the Act specifies when the assurer's liability to pay for the social security payments arises. The assurer is liable to pay the Commonwealth in respect of a social security payment that was received during the period in 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).

Subsection 6(1) 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 6(2) specifies eight supplementary social security payments, which are recoverable if the primary social security payment listed in subsection 5(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.

Part 3 – Requirements for persons to give assurances of support for visa entrants

Section 7

This section provides that, for the purposes of section 1061ZZGB of the Act, Part 3 specifies the requirements that must be met in order for a person to be permitted to give an assurance of support for a visa entrant. A visa entrant does not include a Community Support Programme entrant (see the definition of 'visa entrant').

The note to section 7 directs the reader to Part 4 for requirements that must be met by a person in order to be permitted to give an assurance of support for a Community Support Programme entrant.

Section 1061ZZGB of the Act provides that a 'person' may give an assurance of support if the requirements specified in a determination are met in relation to the person. Item 2 of the table in subsection 1061ZZGH(1) of the Act requires the Minister to specify requirements to be met by a person in order to be permitted to give assurances of support. Those requirements are specified in Part 3 (section 8 specifies the requirements for individuals and section 9 specifies the requirements for bodies) in relation to visa entrants.

Section 8

This section specifies the requirements that must be met by an individual in order to be permitted to give an assurance of support for a visa entrant (subsection 8(1)).

Subsection 8(2) specifies that an individual providing an assurance of support must be an adult, an Australian resident and in Australia. Subsection 5(1) defines 'adult'

as a person who is 18 years of age or more. 'Australian resident' is defined in this Determination 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 SVC (special category visa) holder. Protected SCV holder is defined further in subsections 7(2A), 7(2B), 7(2C) and 7(2D) of the Act.

Subsection 8(3) specifies the requirement that an individual may not give an assurance of support for more than two visa entrants at the same time. The Note at the end of subsection 8(3) informs the reader that there is no restriction on the number of children for whom an individual may give an assurance of support. This reflects that 'visa entrant' is defined in terms which exclude children.

Paragraph 8(3)(a) provides that an individual may not give an assurance for a visa entrant if the individual has previously given an assurance of support for two visa entrants (whether in a single assurance or two separate assurances) and each assurance remains in force.

Paragraph 8(3)(b) specifies the requirement that an individual may not give an assurance of support if the individual has previously given an assurance of support that remains in force for one visa entrant and the individual has previously applied to give an assurance of support for one visa entrant for whom the Secretary has not yet accepted or rejected that assurance.

Paragraph 8(3)(c) specifies the requirement that an individual may not give an assurance of support for a visa entrant if the individual has previously given an assurance for two visa entrants (whether in a single assurance or two separate assurance) and the Secretary has not yet accepted or rejected either or both of those assurances.

Subsection 8(4) specifies the requirement that the individual may not give an assurance of support jointly with another individual or other individuals, for a visa entrant (the **assured**), if acceptance of the assurance would result in assurances from more than three individuals being in force for the assured.

Subsection 8(5) specifies that the individual with an outstanding debt due to the Commonwealth may not give an assurance of support. This means that a person is prohibited from providing an assurance in these circumstances.

The requirements specified in section 8 are consistent with the requirements of the previous Assurance of Support Determinations.

Section 9

This section specifies the requirements that must be met by a body in order to be permitted to give an assurance of support for a visa entrant (subsection 9(1)).

Subsection 9(2) provides that a body is not permitted to give an assurance of support to a visa entrant unless it is a State agency (paragraph 9(2)(a) refers), an

unincorporated association (paragraph 9(2)(b) refers) or body corporate (paragraph 9(2)(c) refers).

Paragraph 9(2)(a) provides that where the body is not a State agency, the body must have been operating for at least two years. Paragraph 9(2)(b)(i) specifies that an unincorporated association must have an address in Australia, operate in Australia, and intend to maintain an address and operate in Australia while any assurance of support given by the body remains in force. Paragraph 9(2)(b)(ii) specifies the requirement that a body corporate must 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.

Subsection 5(1) includes a definition for 'State agency' which makes it possible for a State government Department or a local council to give assurances of support.

Subsection 9(3) specifies when a body may not give an assurance of support. The Note at the end of subsection 9(3) informs the reader that there is no restriction on the number of children for whom a body may give an assurance of support. This reflects that 'visa entrant' is defined in terms which exclude children.

Paragraph 9(3)(a) provides that a body may not give an assurance of support for a visa entrant if the body has previously given an assurance of support for two visa entrants (whether in a single assurance or two separate assurances) and each assurance remains in force.

Paragraph 9(3)(b) provides that a body may not give an assurance of support if the body has previously given an assurance of support that remains in force for one visa entrant and the body has previously given an assurance of support for one visa entrant for whom the Secretary has not yet accepted or rejected that assurance.

Paragraph 9(3)(c) provides that a body may not give an assurance of support for a visa entrant if the body has previously given an assurance for two visa entrants (whether in a single assurance or two separate assurance) and the Secretary has not yet accepted or rejected either or both of those assurances.

Subsection 9(4) specifies that a body must not give an assurance of support jointly with another body or individual.

The requirements specified in section 9 are consistent with the requirements of the previous Assurance of Support Determinations.

Part 4 – Requirements for persons to give assurances of support for Community Support Programme entrants

Section 10

This section provides that, for the purposes of section 1061ZZGB of the Act, Part 4 specifies the requirements that must be met in order for a person to be permitted to give an assurance of support for Community Support Programme entrants.

The note to section 10 directs the reader to Part 3 for requirements that must be met by a person in order to be permitted to give an assurance of support for a visa entrant.

Section 1061ZZGB of the Act provides that a 'person' may give an assurance of support if the requirements specified in a determination are met in relation to the person. Item 2 of the table in subsection 1061ZZGH(1) of the Act requires the Minister to specify requirements to be met by a person in order to be permitted to give assurances of support. Those requirements are specified in Part 4 (section 11 specifies the requirements for individuals and section 12 specifies the requirements for bodies) in relation to Community Support Programme entrants.

Section 11

This section specifies the requirements that must be met by an individual in order to be permitted to give an assurance of support for a Community Support Programme entrant (subsection 11(1)).

Subsection 11(2) specifies that an individual providing an assurance of support must be an adult, an Australian resident and in Australia.

Subsection 11(3) specifies that an individual may not give an assurance of support for more than two Community Support Programme entrants at the same time. The Note at the end of subsection 11(3) informs the reader that there is no restriction on the number of children for whom an individual may give an assurance of support.

Paragraph 11(3)(a) provides that an individual may not give an assurance of support for a Community Support Programme entrant if the individual has previously given an assurance of support for two Community Support Programme entrants (whether in a single assurance or two separate assurances) and each assurance remains in force.

Paragraph 11(3)(b) specifies that an individual may not give an assurance of support if the individual has previously given an assurance of support that remains in force for one Community Support Programme entrant and the individual has previously given an assurance of support for one Community Support Programme entrant for whom the Secretary has not yet accepted or rejected that assurance.

Paragraph 11(3)(c) specifies that an individual may not give an assurance of support for a Community Support Programme entrant if the individual has previously given an assurance for two Community Support Programme entrants (whether in a single assurance or two separate assurances) and the Secretary has not yet accepted or rejected either or both of those assurances.

Subsection 11(4) specifies that the individual may not give an assurance of support jointly with another individual or other individuals, for a Community Support Programme entrant (the **assured**), if acceptance of the assurance would result in assurances from more than three individuals being in force for the assured.

Subsection 11(5) specifies that the individual with an outstanding debt due to the Commonwealth may not give an assurance of support. This means that a person is prohibited from providing an assurance in these circumstances.

The requirements specified in section 11 are consistent with the requirements in section 8 of this Determination.

Section 12

This section specifies the requirements that must be met by a body, other than a State agency, in order to be permitted to give an assurance of support for a Community Support Programme entrant (subsection 12(1)).

Subsection 12(2) specifies that a body is not permitted to give an assurance of support for a visa entrant unless it is an unincorporated association or a body corporate.

Paragraph 12(3)(a) specifies that an unincorporated association must have an address in Australia, operate in Australia, and intend to maintain an address and operate in Australia while any assurance of support given by the body remains in force. Paragraph 12(3)(b) specifies that a body corporate must 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. Paragraph 12(3)(c) provides that a body must have been operating for at least two years.

Subsection 12(3) specifies the requirement that a body may not give an assurance of support for more than two Community Support Programme entrants at the same time. The Note at the end of subsection 12(3) informs the reader that there is no restriction on the number of children for whom a body may give an assurance of support.

Paragraph 12(3)(a) specifies that a body may not give an assurance of support for a Community Support Programme entrant if the body has previously given an assurance of support for two Community Support Programme entrants (whether in a single assurance or two separate assurances) and each assurance remains in force.

Paragraph 12(3)(b) specifies that a body may not give an assurance of support if the body has previously given an assurance of support that remains in force for one Community Support Programme entrant and the body has previously given an assurance of support for one Community Support Programme entrant for whom the Secretary has not yet accepted or rejected that assurance.

Paragraph 12(3)(c) specifies that a body may not give an assurance of support for a Community Support Programme entrant if the body has previously given an assurance for two Community Support Programme entrants (whether in a single assurance or two separate assurance) and the Secretary has not yet accepted or rejected either or both of those assurances.

Subsection 12(4) specifies the requirement that a body must not give an assurance of support jointly with another body or individual.

The requirements specified in section 12 are consistent with the requirements in section 9 of this Determination.

Part 5 – Requirements for Secretary to accept assurance of support

Section 13

This section provides, for the purposes of paragraph 1061ZZGD(2)(a) of the Act, that Part 5 specifies the requirements to be met by a person who gives an assurance of support in order for the Secretary to be permitted to accept that assurance of support.

Paragraph 1061ZZGD(2)(a) of the Act has the effect that if an assurance of support is given under chapter 2C of the Act, the Secretary may accept the assurance only if, among other requirements, he or she is satisfied a person who gave an assurance of support has met the requirements that are specified in a determination under section 1061ZZGH of the Act.

Section 14

Subsection 14(1) specifies that an individual who gives an assurance of support must meet the income requirement specified in subsection 14(2).

Subsection 14(2) provides that, subject to subsection 14(5) an income requirement is about providing evidence acceptable to the Secretary about the individual's income for the current financial year, the first financial year and the second financial year. Subsection 5(1) contains definitions for 'current financial year', 'first financial year' and 'second financial year'.

Subsection 14(3) provides that, for the current financial year, the individual must provide evidence about his or her assessable income for the part of the financial year up to the date on which the assurance is given. Paragraphs 14(3)(a) to (c) specify the form of the evidence may include the following:

- (a) a document showing the individual'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 individual'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 subsection 5(1) that have been paid to the individual in the current financial year.

Subsection 14(4) provides that for the first financial year and the second financial year, an individual must provide evidence about his or her assessable income for

each of those financial years. Paragraphs 14(4)(a) and (b) specify the form of the evidence to be provided as including the following:

- (a) a notice of assessment issued in relation to the individual and the year;
- (b) if the notice of assessment does not disclose sufficient income to satisfy the income requirement specified in subsection 15(2) or subsection 16(2) — documents showing payments of the kind mentioned in paragraphs (b) to (e) of the definition of ‘assessable income’ in subsection 5(1) that have been paid to the individual in that financial year.

Subsection 14(5) provides that if an individual’s assessable income for a financial year exceeds the **relevant amount** (as specified in subsections 15(2) and 16(2)), the individual need only provide evidence of the relevant amount of that income.

Section 15

This section specifies an income requirement for a single individual assurer. Subsection 15(1) provides that section 15 applies to an individual who gives an assurance of support as a single assurer.

Subsection 15(2) specifies that the individual meets the income requirement for a financial year if the amount of the individual’s income for the year is at least the total of:

- (a) the newstart income cut-off amount multiplied by the total of:
 - (i) one (representing the individual giving the assurance of support); and
 - (ii) the total number of adults receiving assurance under the assurance of support given by the person; and
 - (iii) if the individual giving the assurance of support has a partner – one; and
- (b) 10% of the newstart income cut-off amount multiplied by:
 - (i) the number of children of the individual giving the assurance of support; and
 - (ii) the number of children of any adults receiving assurance under the assurance of support.

The example at the end of section 15 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. That is, if a partnered individual with one child applies to give an assurance of support for a migrating family of two parents and two children, the minimum required income amount of the individual is the total of:

- \$115,476 (the newstart income cut-off amount of \$28,869 multiplied by the total number of individuals giving assurance, persons receiving an assurance, and the partner of the individual giving the assurance of support (in total 4 adults)); and

- \$8,661 (10% of the newstart income cut-off amount of \$28,869 multiplied by the total number of children of both the individual giving the assurance of support, and the persons receiving assurance (in total 3 children)).

This example is based on the rate of newstart allowance as indexed at 1 July 2017, which would apply up to and including 30 June 2018. While the rate of newstart allowance is indexed in September and March each financial year, those indexations are not taken into account until the following July for the purposes of calculating the income amount required under this Determination.

The child of an individual is a person under 18 years of age who is a dependent child of the individual. Children of an assuree who are over 18 years of age are considered to be adults and are required to have a separate assurance of support.

Section 16

This section specifies the income requirement for an individual who gives an assurance of support jointly with another individual or individuals.

Subsection 16(1) provides that section 16 applies to an individual who gives an assurance of support jointly with another individual.

Subsection 16(2) provides that the individual in a joint assurance 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 following amounts:

- (a) the newstart income cut-off amount multiplied by the total of:
 - (i) the total number of individuals giving the assurance of support; and
 - (ii) the total number of adults receiving assurance under an assurance of support given by the individual; and
 - (iii) the total number of partners of the individuals that are jointly giving the assurance of support; and
- (b) 10% of the newstart income cut-off amount multiplied by:
 - (i) the number of children of the individuals giving the assurance of support; and
 - (ii) the number of children of any adults receiving assurance under the assurance of support.

The example at the end of section 16 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. That is, if two joint assurers (who each have a partner and two children) give an assurance of support for a migrating family of two parents and three children, the combined minimum required income amount of both assurers is the total of:

- \$173,214 (the newstart income cut-off amount of \$28,869 multiplied by the total number individuals giving the assurance of support, persons receiving an assurance, and the partners of the individuals giving the assurance of support (in total 6 adults)); and

- \$20,208 (10% of the newstart income cut-off amount of \$28,869 multiplied by the total number of dependent children of both the individuals giving the assurance of support, and the persons receiving assurance under the assurance of support (in total 7 children)).

This example is based on the rate of newstart allowance as indexed at 1 July 2017, which would apply up to and including 30 June 2018. While the rate of newstart allowance is indexed in September and March each financial year, those indexations are not taken into account until the following July for the purposes of calculating the income required under this Determination.

The child of an individual is a person under 18 years of age who is a dependent child of the individual. Children of an assuree who are over 18 years of age are considered to be adults and are required to have a separate assurance of support.

Section 17

This section specifies requirements to be met, in relation to a body giving an assurance of support.

Subsection 17(1) specifies that 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.

Subsection 17(2) specifies that a body, other than a State agency, may only give an assurance of support if the Secretary is satisfied that the body has the capacity to support the adults receiving assurance under the assurance of support.

Part 6 – Value of securities before 1 April 2019

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.

Paragraph 1061ZZGD(3)(b) of the Act has the effect that if an assurance of support is given under chapter 2C of the Act, the Secretary may accept the assurance only if, among other requirements, at least one 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) of the Act.

The form in which a security may be given is approved and published from time to time by the Secretary under paragraph 1061ZZGD(3)(a) of the Act.

Section 18

This section provides, for the purposes of paragraph 1061ZZGD(3)(b) of the Act, that Part 6 specifies the values of securities to be given by a person in order for the

Secretary to be permitted to accept the assurance of support, being assurances of support given before 1 April 2019.

Section 19

Section 19 specifies the value of a security to be given by an individual (subsection 18(1)).

Subsections 19(2) specifies the values of securities for an assurance of support given before 1 April 2019 as follows:

- (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 paragraphs (a) or (b), 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 paragraphs (a) or (b), for a person identified in the assurance who is seeking to satisfy the secondary criteria for the grant of the visa — \$2,000;

Subsection 5(1) defines ‘primary criteria’ and ‘secondary criteria’. As required by subsection 1061ZZGH(3) of the Act, the Minister administering the *Migration Act 1958* (the Migration Act) was consulted with regard to the values of securities required for Secretary’s acceptance of an assurance of support.

Section 20

Section 20 specifies the value of a security required to be given by a body prior to 1 April 2019. The value is different depending on whether the body is a State agency, and the period of time for which an assurance is required.

Subsection 20(1) specifies the values of securities for an assurance of support given during that period by a body other than a State agency as follows:

- (a) if the assurance is for 2 years — \$10,000; or
- (b) if the assurance is for 10 years — \$20,000.

Subsection 20(2) specifies that the value of a security required from a State agency is nil. The value is nil in all cases, irrespective of the period for which an assurance is required.

Part 7 Value of securities on or after 1 April 2019

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.

Paragraph 1061ZZGD(3)(b) of the Act has the effect that if an assurance of support is given under chapter 2C of the Act, the Secretary may accept the assurance only if, among other requirements, at least one 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) of the Act.

The form in which a security may be given is approved and published from time to time by the Secretary under paragraph 1061ZZGD(3)(a) of the Act.

Section 21

Section 21 provides, for the purposes of paragraph 1061ZZGD(3)(b) of the Act, Part 7 specified the values of securities to be given by a person for the Secretary to be permitted to accept the assurance of support, being assurances of support given on or after 1 April 2019.

Section 22

Section 22 specifies the value of a security to be given by an individual (subsection 22(1)).

Subsections 22(2) specifies the values of securities for an assurance of support given on or after 1 April 2019 as follows:

- (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 — \$15,000;
- (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 — \$6,000;
- (c) for an assurance of support for an application for a visa other than the kind mentioned in paragraphs (a) or (b), for a person identified in the assurance seeking to satisfy the primary criteria for the grant of the visa — \$7,500;
- (d) for an assurance of support for an application for a visa other than the kind mentioned in paragraphs (a) or (b), for a person identified in the assurance who is seeking to satisfy the secondary criteria for the grant of the visa — \$3,000;

Subsection 5(1) defines 'primary criteria' and 'secondary criteria'. As required by subsection 1061ZZGH(3) of the Act, the Minister administering section 65 of the Migration Act was consulted with regard to the values of securities required for Secretary's acceptance of an assurance of support.

Section 23

Section 23 specifies the value of a security required to be given by a body on or after 1 April 2019. The value is different depending on whether the body is a State agency, and the period of time for which an assurance is required.

Subsection 23(1) specifies the values of securities for an assurance of support given during that period by a body other than a State agency as follows:

(a) if the assurance is for 2 years — \$15,000; or

(b) if the assurance is for 10 years — \$30,000.

(a) Subsection 23(2) specifies that the value of a security required from a State agency is nil. The value is nil in all cases, irrespective of the period for which an assurance is required.

Part 8 – When accepted assurances remain in force

Section 24

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.

Section 24 provides that for the purposes of subparagraph 1061ZZGF(1)(b)(i) 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) for an assurance of support for a Community Support Programme entrant — 12 months;

(c) in any other case — 2 years.

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

Section 25

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 25 specifies the following circumstances where an assurance of support ceases, for the purposes of subparagraph 1061ZZGF(1)(b)(iii):

- (a) after arrival in Australia, a person identified in an assurance of support, other than a Community Support Programme entrant, is granted refugee status by the Australian Government;
- (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.

A Note at the end of section 25 informs the reader that financial hardship on the part of an assurer is not, of itself, a special circumstance.

The two Examples at the end of section 25 illustrate the types of circumstances where an assurance of support ceases to be in force.

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.

Example 2: A person (the assurer) with an income of approximately \$90 000 has provided a 2 year assurance for his mother-in-law. 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.

Schedules – Revocation of previous Determinations

Schedule 1 revokes the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* which was made by the former Minister for Families, Housing, Community Services and Indigenous Affairs. Schedule 2 revokes the *Social Security (Assurances of Support) (DEEWR) Determination 2008* which was made by the former Minister for Education, Employment and Workplace Relations.

As Chapter 2C of the Act was jointly administered at that time, each Minister was required to make a determination for the administration of the assurances of support scheme.

Section 4 of this Determination relies on subsection 33(3) of the *Acts Interpretation Act 1901* which provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

In accordance with the Administrative Arrangements Order currently in force (dated 1 September 2016 as amended 5 January 2018), the Minister for Social Services has sole responsibility for the administration of Chapter 2C of the Act. Accordingly, the Minister for Social Services is responsible for revoking the two Determinations.

Schedule 1 – Revocation of the Social Security (Assurances of Support) (FaHCSIA) Determination 2007

Schedule 1 of this instrument revokes the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007*. This instrument sunsets on 1 April 2018.

Schedule 2 – Revocation of the Social Security (Assurances of Support) (DEEWR) Determination 2008

Schedule 2 of this instrument revokes the *Social Security (Assurances of Support) (DEEWR) Determination 2008*. This instrument sunsets on 1 April 2018.

Statement of Compatibility with Human Rights

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

Social Security (Assurances of Support) Determination 2018

The *Social Security (Assurances of Support) Determination 2018* (the 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 Determination is made under subsection 1061ZZGH(1) of the *Social Security Act 1991*. In addition, the Determination revokes the *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* and *Social Security (Assurances of Support) (DEEWR) Determination 2008*.

The purpose of the Determination is to set out the requirements that must be met for an individual or body to be permitted to give an assurance of support for the visa entrants and the Community Support Programme entrants (i.e. adult applicants for a Global Special Humanitarian visa (subclass 202) if the visa application includes a proposal by an approved proposing organisation). The requirements include eligibility criteria, income requirements and values of required securities.

The primary objective of the Assurance of Support scheme is to protect social security outlays while allowing the migration of people who might otherwise not normally be permitted to come to Australia.

Human rights implications

The Determination engages the following rights:

- the right to social security contained in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Article 24 of the *United Nations (UN) 1951 Convention and 1967 Protocol Relating to the Status of Refugees*, and Articles 11(1)(e) and 14(2)(c) of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW); and
- the right to an adequate standard living contained in Article 11(1) of the ICESCR and Article 14(2)(h) of the CEDAW.

The Determination does not limit the right to social security and an adequate standard living for the visa entrants, e.g. holders of Parent visas. The assurance of support is a legally binding commitment by the assurer to support the visa entrants for the duration of the assurance period. This commitment may be secured by a bond, which is used to repay any recoverable social security payments made to the visa entrants during this period. If the assurer is not able to provide adequate support to the visa entrants during the assurance period, the visa entrants may be eligible for

a social security payment, e.g. Special Benefit, subject to meeting waiting periods and other eligibility criteria. The assurer is responsible for repayment of any recoverable social security payments received by the visa entrants during the assurance period.

The Determination does not limit the right to social security and an adequate standard living for the Community Support Programme entrants, as they have full access to social security payments and are exempt from all waiting periods or qualifying residence periods for social security payments, just like any other humanitarian entrants.

The assurance of support does not prevent the Community Support Programme entrants from receiving social security payments. Rather, it makes the assurer financially responsible for the cost of certain social security payments provided to the Community Support Programme entrants. This is consistent with the objective of the Community Support Programme, which is to harness the capacity of the Australian community to provide a financial contribution towards the costs of humanitarian settlement.

Conclusion

The Determination is compatible with human rights because it does not limit the right to social security and an adequate standard living for the visa entrants and Community Support Programme entrants.

Hon Dan Tehan MP, Minister for Social Services