

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Assurances of Support) Amendment Determination 2018

Purpose

The *Social Security (Assurances of Support) Determination 2018* specifies matters for the purpose of subsection 1061ZZGH(1) of the Act and revokes the previous *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* (the FaHCSIA Determination) and *Social Security (Assurances of Support) (DEEWR) Determination 2008* (the DEEWR Determination), which sunset on 1 April 2018.

The amendments made by the *Social Security (Assurances of Support) Amendment Determination 2018* (the Determination) revise certain requirements for the Secretary to accept an assurance of support, including eligibility criteria, income requirements and values of required securities, in line with the previous FaHCSIA Determination and DEEWR Determination.

Background

This Determination makes changes to the requirements for the Secretary to accept an assurance of support, including the values of securities, to ensure the requirements an individual, or joint individuals, and the requirements for bodies are commensurate with the objective of protecting social security outlays by the Commonwealth while allowing the migration of people who might not otherwise be permitted to come to Australia.

The changes will apply from 1 April 2018, so as not to disadvantage a person or body who has given an assurance since this date.

The changes balance the need to ensure an assurer has capacity to provide the level of financial support required by a visa entrant or a Community Support Programme entrant with the visa application process and associated timeframes, which may result in there being a significant period between the date of the relevant visa application and an assurance of support being given.

Commencement

The Determination will commence on 1 April 2018. The retrospective application of the Determination means the amended requirements will apply to assurances of support given from 1 April 2018 and accordingly these individuals or bodies will not be disadvantaged compared to those who give an assurance after the date the instrument is made.

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.

Regulation Impact Statement (RIS)

OBPR ID 23503

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required for the proposed amendments in this Determination.

Explanation of the provisions

Section 1

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

Section 2

This section provides for the commencement of the *Social Security (Assurances of Support) Amendment Determination 2018* (the Determination) from 1 April 2018. The retrospective application of the Determination ensures the benefit of the changes will apply to the assessment of assurances given since the *Social Security (Assurances of Support) Determination 2018* came into effect on 1 April 2018.

The retrospective application of the amendments from 1 April 2018 is permissible under the *Legislation Act 2003* as the broader eligibility requirements and lower income thresholds that will apply mean there will be no disadvantageous effect on the rights of an assurer.

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 the *Social Security (Assurances of Support) Determination 2018* is amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1

Item 1 inserts a new section 2A which provides that the *Social Security (Assurances of Support) Determination 2018* is repealed on 31 March 2021, which will take effect from the start of that day.

Item 2

Consistent with the previous FaHCSIA and DEEWR Determinations, item 2 reinstates two definitions in subsection 5(1) of the Determination. These definitions set out the meaning of the terms '*applicable supplement amount*' and '*base FTB child rate*' as referred to in the amendments made by items 12 and 13.

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

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

Item 3

This item repeals the definition of '*newstart income cut-off amount*' in subsection 5(1) of the Determination. This is a consequential change as a result of the amendments made by item 10.

Items 4 and 7

These items remove paragraphs (8)(2)(c) and 11(2)(c) so that in order to be permitted to give an assurance of support for a visa entrant or a Community Support Programme entrant respectively, an individual will not be required to be in Australia.

This change will bring the Determination in line with the previous FaHCSIA Determination and DEEWR Determination in relation to visa entrants and will make the requirement for an individual who is giving an assurance of support for a Community Support Programme entrant consistent with this.

Items 5 and 8

These items repeal subsections 8(5) and 11(5) with the effect that outstanding debts to the Commonwealth will not preclude an individual from giving an assurance of support for a visa entrant or a Community Support Programme entrant.

This change brings the Determination in line with the previous FaHCSIA Determination and DEEWR Determination in relation to visa entrants and will make the requirement for an individual who is giving an assurance of support for a Community Support Programme entrant consistent with this.

An individual who provides an assurance of support will be required to meet the relevant requirements for the Secretary to accept the assurance of support under Part 5 of the Determination and will be responsible for managing their financial affairs in order to meet any social security debts incurred by the assuree.

Items 6 and 9

These items remove the requirements under subsections 9(3) and 12(3) for a body other than a State agency to have been operating for at least two years and to operate in Australia, in order to give an assurance of support for a visa entrant and a Community Support Programme entrant respectively. These limitations did not apply to bodies under the previous FaHCSIA Determination and DEEWR Determination.

Item 10

This item reinstates the position under section 11 of the previous FaHCSIA Determination and DEEWR Determination, which required evidence to be provided for only two financial years, rather than three. This means evidence about the assessable income of an individual who is giving an assurance of support, in order to meet the income requirement specified in section 15 or section 16 as applicable, can be evidence of assessable income for the current financial year and first financial year or, if the person does not have evidence for the first financial year, the current financial year and second financial year.

Item 11

This item repeals the income requirement for a single assurer under subsection 15(2) and substitutes an alternative requirement. This change reintroduces the income requirement for a single individual assurer applied under the FaHCSIA Determination and DEEWR Determination.

The income requirements an individual giving an assurance of support will be required to meet in respect of each financial year will depend on the number of adults receiving an assurance and the number of dependent children of the assurer.

New subsection 15(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 income for that year is at least the total of the amounts specified in that subsection.

The term '*assessable income*' is defined in section 5.

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; 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.

The terms '*rate of newstart allowance*', '*base FTB rate*' and '*applicable supplement amount*' are defined in section 5.

An 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. The example uses an approximate annual newstart allowance amount for illustration purposes. This is based on the fortnightly newstart allowance basic rate (single with dependent children).

Item 12

This item repeals the income requirement for joint individual assurers under subsection 16(2) and substitutes an alternative requirement. This change reintroduces the income requirement for joint individual assurers applied under the previous FaHCSIA Determination and DEEWR Determination.

New subsection 16(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 for 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 5.

The total amount consists of:

- the applicable rate of newstart allowance for the current financial year multiplied by the total number of adults giving the assurance and the total number of adults receiving an assurance; 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.

The terms '*rate of newstart allowance*', '*base FTB rate*' and '*applicable supplement amount*' are defined in section 5.

An 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. The example uses an approximate annual newstart allowance amount for illustration purposes. This is based on the fortnightly newstart allowance basic rate (single with dependent children).

Item 13

This item removes the reference to 1 April 2019 from the heading to Part 6, as a consequence of the amendments made by item 14.

Item 14

This item removes the reference to 1 April 2019 from section 18, so that the values of securities specified under Part 6 for the purposes of paragraph 1061ZZGD(3)(b) of the *Social Security Act 1991* will not be time limited. This amendment is consistent with item 18, which provides for the repeal of Part 7 concerning the value of securities on or after 1 April 2019.

Items 15, 16 and 17

These items remove the references in subsections 19(2), 20(1) and 20(2) to 1 April 2019, as a consequence of the amendments made by item 14.

Item 18

This item repeals Part 7 relating to the increased value of securities on or after 1 April 2019. The value of securities required for the Secretary's acceptance of assurances will not increase and will remain as specified in Part 6 of the Determination.

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) Amendment Determination 2018

The *Social Security (Assurances of Support) Amendment 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*.

The purpose of the Determination is to amend 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) where the visa application includes a proposal by an approved proposing organisation). The amendments revise certain requirements for the Secretary to accept an assurance of support, including eligibility criteria, income requirements and values of required securities, in line with the previous *Social Security (Assurances of Support) (FaHCSIA) Determination 2007* and *Social Security (Assurances of Support) (DEEWR) Determination 2008*.

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 otherwise not 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.

The Hon Dan Tehan MP, Minister for Social Services