

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security (Administration) Act 1999

*Social Security (Administration) (Class of Persons - Intent to Claim)
Determination 2018*

Purpose

This Determination prescribes a class of persons whose claim for a social security payment or concession card may be deemed to have been made earlier than the claim was actually lodged.

Background

From 1 July 2018, as the result of amendments to the *Social Security (Administration) Act 1999* ('the Act') by Schedule 11 to the *Social Services Legislation Amendment (Welfare Reform) Act 2018* (the Amending Act), the circumstances in which a claim for a social security payment or concession card may be deemed to be made earlier than it was actually made is limited to persons in a class determined by the Minister by legislative instrument. If the Department of Human Services is contacted by or on behalf of a person in relation to a claim, and the person is, on that day, included in a class of persons determined in an instrument under section 14A, and meets various other criteria including that the person subsequently lodges a claim, then the claim may be deemed to be made on the day the Department of Human Services was contacted. This may result in the payment or card commencing retrospectively.

The class of persons prescribed by the Determination is designed to relate to a person who may not be able to lodge a claim, including providing the required documentation, in a timely manner due to being in vulnerable circumstances. Accordingly, although the intent to claim provisions in sections 13 and 14 will no longer apply to claimants generally, the provisions will continue to apply to a vulnerable claimant, being a person included in a class of persons prescribed by the Determination.

Claimants in vulnerable circumstances who have a genuine difficulty in providing documents with the claim will be able to lodge a claim and to provide any required documents subsequently. The actual claim date will be the lodgement date, and the deemed claim date (under the intent to claim provisions) will be the contact date where applicable.

Commencement

The Determination commences on 1 July 2018, which is when the amendments effected by Schedule 11 to the Amending Act commence. It will only apply to contacts to the Department of Human Services from 1 July 2018 as the result of item 18 of Schedule 11 to the Amending Act, and so will operate prospectively only.

Consultation

The Department of Human Services has been consulted on the proposed content of the Determination. External consultation has not been undertaken, as consultation of external organisations occurred during consideration of the Social Services Legislation Amendment (Welfare Reform) Bill 2017.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required for the proposed Determination. The OBPR reference is 23842.

Explanation of the provisions

Section 1 sets out the name of the Determination.

Section 2 provides that the Determination commences on 1 July 2018.

Section 3 sets out the authority for the Determination.

Section 4 sets out definitions used in the Determination. Many terms used in the Determination are defined in the *Social Security Act 1991*, and detail of these terms is set out in a note.

Section 5 sets out the class of persons to whom paragraphs 13(1)(aa), (2)(aa), (3)(aa) and (3A)(aa) and 14(1)(aa), (2)(aa), (3)(aa) and (3A)(aa) of the Act apply.

The person's inclusion in the class is tested during a period, called the 'relevant period'. The 'relevant period' is defined in section 4 to mean the period of 8 weeks ending on the contact day. 'Contact day' is defined in section 4 to mean the day on which the Department is contacted by or on behalf of a person in relation to a claim for a social security payment or concession card. The reference to 'the Department' is deemed to be a reference to the Department of Human Services (see clause 2 of Schedule 5 to the Act). The condition may predate the relevant period, with the exception of the conditions relating to being released from prison or psychiatric confinement, or a parent of a newborn child, or affected by the death of an immediate family member, or a humanitarian entrant to Australia, or a person whose principal place of residence was lost or sustained major damage as a result of an extreme circumstance. The conditions may apply at any time during the relevant period.

If any of the factors set out in the paragraphs of section 5 apply, the person is within the prescribed class only if the factor results in the person being unable to lodge a claim on the contact day.

The factors are set out in the paragraphs of section 5.

Paragraph (a) applies if the person is subject to domestic or family violence.

Paragraph (b) applies if the person is homeless.

Paragraph (c) applies if the person is hospitalised or suffering from a temporary incapacity arising from a medical condition.

Paragraph (d) applies if the person is released from prison or psychiatric confinement. 'Psychiatric confinement' is defined in subsection 23(8) of the Social Security Act (see the note to section 4).

Paragraph (e) applies if the person is experiencing high stress associated with a relationship separation.

Paragraph (f) applies if the person is a parent of a dependent child born during the 'relevant period', which is the 8 weeks ending on the contact day. 'Parent' and 'dependent child' are defined in subsection 5(1) of the Social Security Act (see the note to section 4).

Paragraph (g) applies if the person is affected by the death of an immediate family member. 'Immediate family member' is defined in subsection 23(1) of the Social Security Act (see the note to section 4).

Paragraph (h) applies if the person is a person who entered Australia during the relevant period as a humanitarian entrant to Australia. 'Humanitarian entrant to Australia' is defined in section 4 as a person who arrives in Australia and the arrival is the first time the person has arrived in Australia as the holder of a humanitarian visa. 'Humanitarian visa' is similarly defined in section 4 as a visa that is a qualifying humanitarian visa specified by the Minister by legislative instrument under subsection 1061J(2) of the Social Security Act. Currently the Subclass 200 (Refugee); Subclass 201 (In-country Special Humanitarian); Subclass 202 (Global Special Humanitarian); Subclass 203 (Emergency Rescue); and Subclass 204 (Woman at Risk) visas are specified.

Paragraph (i) applies if the person's usual place of residence is in a remote area, and the person is physically present in a remote area. 'Remote area' and 'physically present in a remote area' have the meaning given by section 14 of the Social Security Act (see the note to section 4). In particular, a person may remain regarded as 'physically present in the remote area' during temporary absences of up to 8 weeks.

Paragraph (j) relates to a person whose principal place of residence was lost or sustained major damage during the relevant period as a result of an extreme circumstance. 'Extreme circumstance' is defined in section 4 as including, but not limited to a flood, a fire, an earthquake, and a storm.

Paragraph (k) relates to a person being subject to other special circumstances beyond the person's control, which result in the person being unable to lodge a claim on the contact day. This enables the Department of Human Services to determine on a case-by-case basis other instances where a claimant is unable to lodge a claim due to being in special circumstances. Examples of where the condition could apply

include where the person is:

- a victim of crime (e.g. possessions stolen);
- a former recipient of Status Resolution Support Services payment while holding a bridging visa who claims Special Benefit on being granted a temporary protection visa;
- outside Australia and claiming under an international agreement.

A note to section 5 alerts the reader to the fact a person may be considered to be physically present in a remote area during temporary absences (see subsection 14(2) of the Social Security Act).

Statement of Compatibility with Human Rights

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

Social Security (Administration) (Class of Persons - Intent to Claim) Determination 2018

The *Social Security (Administration) (Class of Persons - Intent to Claim) 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 section 14A of the *Social Security (Administration) Act 1999* (the Act). The Determination prescribes a class of persons for the purposes of the intent to claim provisions in sections 13 and 14 of the Act, which deem a claim by a person who is included in a prescribed class of persons to be made on the day on which the person initially contacted the Department of Human Services in relation to the claim.

A prescribed class of persons is designed to relate to a person who is unable to fully complete a claim due to being in vulnerable circumstances. The Determination prescribes 11 instances of vulnerable circumstances. The first 10 of the 11 instances describe the type of vulnerable circumstance (such as being subject to domestic or family violence), and the final instance refers to other special circumstances beyond the person's control. The final instance is designed to enable the Department of Human Services to determine on a case by case basis other instances where a claimant is in special circumstances.

Claimants in vulnerable circumstances who have a genuine difficulty in providing documents with the claim will be able to lodge a claim and to provide any required documents subsequently. The actual claim date will be the lodgement date, and the deemed claim date (under the intent to claim provisions) will be the contact date where applicable.

Human rights implications

The Determination engages human rights related to the right of everyone to social security in Article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions, in Article 11 of the International Covenant on Economic, Social and Cultural Rights.

Limiting the deemed claim provisions to apply to a vulnerable claimant only will not remove access to the range of social security payments that currently attract these provisions. Access to these payments will remain, regulated by the same qualification rules in place before the limiting of the deemed claim provisions to a vulnerable claimant only. For claimants generally, payments will now be made, if eligible, from the date on which a person submits all material necessary to be

assessed that is within their control, with the aim of maintaining the general integrity of the social security system.

For a vulnerable claimant, being a person included in a class of persons prescribed by the Determination, the deemed claim provisions will continue to apply. This acknowledges that there may be occasions when a person in vulnerable circumstances may not be able to lodge a claim, including providing the required documentation, in a timely manner.

Conclusion

The Determination is compatible with human rights because to the extent that it may tighten the claim process for claimants not included in a class of persons prescribed by the Determination, the stricter requirements are reasonable, necessary and proportionate.

The Minister for Social Services, the Hon Dan Tehan MP