

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Families and Social Services

*Social Security Act 1991*

*Social Security (Assurances of Support) Amendment Determination 2018 (No. 2)*

### **Purpose**

The *Social Security (Assurances of Support) Determination 2018* specifies matters for the purpose of subsection 1061ZZGH(1) of the *Social Security Act 1991*.

The amendment made by the *Social Security (Assurances of Support) Amendment Determination 2018 (No.2)* (the instrument) increases the assurance of support period for certain visas in line with changes to newly arrived resident's waiting periods (NARWPs) under the *Social Security Act 1991* (the Act).

### **Background**

The instrument changes the assurance of support period for certain visas.

The changes will align with the amendments made by the *Social Services and Other Legislation Amendment (Promoting Sustainable Welfare) Act 2018*, to increase existing NARWPs under the *Social Security Act 1991* for various social security payments and concession cards and introduce a NARWP for certain payments.

The instrument applies the increased four year assurance of support period only to assurances of support given on or after commencement of the instrument. This means there will be no disadvantage to a person who gives an assurance (by lodging the assurance in accordance with section 1061ZZGC of the Act) prior to commencement of the instrument, even if a decision whether to accept or reject the assurance is not made by the Secretary until after commencement of the instrument.

In addition to the power to make this instrument under section 1061ZZGH of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* 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. Accordingly, this instrument amends and varies the *Social Security (Assurances of Support) Determination 2018*.

### **Commencement**

The instrument will commence on the later of 1 January 2019 and the day following registration.

## **Consultation**

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

## **Regulation Impact Statement (RIS)**

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required for the proposed amendments in this instrument (OBPR ID 23652).

## **Explanation of the provisions**

### **Section 1**

This section provides that the instrument is the *Social Security (Assurances of Support) Amendment Determination 2018 (No. 2)*.

### **Section 2**

This section provides for the commencement of the *Social Security (Assurances of Support) Amendment Determination 2018 (No.2)* (the instrument) on the later of 1 January 2019 and the day following registration.

### **Section 3**

This section provides that the instrument 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 repeals and substitutes section 24 of the instrument.

New paragraph 24(1)(a) does not change the 10 year assurance of support period for Contributory Parent (Migrant) (Class CA) visa and Contributory Aged Parent (Residence) (Class DG) visa, but adds reference to the relevant subclasses .

No change is made to the 12 month assurance of support period under paragraph 24(1)(b) for a Community Support Programme entrant.

New paragraph 24(1)(c) continues an assurance of support period of 2 years where an assurance has been given, and accepted by the Secretary, for a person who is a holder of a Subclass 115 (Remaining Relative) (Class BU) visa, Subclass 117 (Orphan Relative) (Class AH) visa or Subclass 837 (Orphan Relative) (Class BT) visa.

New paragraph 24(1)(d) introduces an assurance of support period of four years for an assurance that has been given, and accepted by the Secretary, for a person not covered by paragraphs 24(a), (b) or (c).

As required by subsection 1061ZZGH(3) of the Act, the Minister administering the *Migration Act 1958* was consulted with regard to the period for which an assurance will remain in force under new section 24.

## Item 2

Item 2 is an application provision for the amendment made by Schedule 1. The amendment applies only to assurances of support given under Chapter 2C of the *Social Security Act 1991* on or after the commencement of the instrument. This means there will be no disadvantage to a person who gives an assurance of support before commencement of the instrument where the Secretary makes a decision whether to accept or reject the assurance, under section 1061ZZGD of the *Social Security Act 1991*, after the commencement of the instrument.

## **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 (No.2)***

The *Social Security (Assurances of Support) Amendment Determination 2018 (No.2)* (the instrument) 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 instrument is made under subsection 1061ZZGH(1) of the *Social Security Act 1991*.

The amendment made by the instrument increases the assurance of support period from two to four years for certain visas in line with changes to newly arrived resident's waiting periods (NARWPs) under the *Social Security Act 1991*.

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 instrument 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 instrument does not change the 12-month assurance period for entrants under the Community Support Program, or 10-year assurance period for Contributory Parent visa entrants under the parent migration program.

For visa entrants affected by the increased four year assurance of support, the instrument does not limit their right to social security and an adequate standard living. An 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. The assurer is responsible for repayment of any recoverable social security payments received by the visa entrants during the assurance period.

### **Conclusion**

The instrument is compatible with human rights because it does not limit the right to social security and an adequate standard living for the visa entrants covered by an assurance of support.