

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 2021

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 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 purposes of the definition of assurance of support in section 1061ZZGA and section 1061ZZGG of the Act;
- requirements to be met for persons (individual or body) to be permitted by section 1061ZZGB of the Act 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) of the Act 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;
- circumstances in which assurances of support accepted under Chapter 2C of the Act cease to be in force under subparagraph 1061ZZGF(1)(b)(iii) of the Act.

The Social Security (Assurances of Support) Determination 2018 (the Determination) specifies these matters.

The amendments to the Determination made by the Social Security (Assurances of Support) Amendment Determination 2021 (the instrument) will:

- make 31 March 2024 the new repeal date of the Determination;
- clarify the values of securities for bodies under section 20 of the Determination where the assurance period is for four years; and
- replace references to newstart allowance with references to jobseeker payment, as a consequence of the cessation of newstart allowance and creation of the new jobseeker payment on 20 March 2020 by the *Social Services Legislation Amendment (Welfare Reform) Act 2018* (the Welfare Reform Act).

Background

The instrument clarifies the value of securities for bodies under section 20 of the Determination to reflect the periods for which assurances remain in force. From 1 January 2019, the assurance period for certain visas increased from two years to four years under the Social Security (Assurances of Support) Amendment Determination 2018 (No. 2). However, the value of securities for bodies was not updated at the time. As a result, section 20 of the Determination only specifies the value of securities for bodies where the assurance is for two years or 10 years, but not where the assurance is for four years. The instrument ensures the existing value of securities for bodies for a two year assurance also applies in respect of a four year assurance. Amendments are not required to the value of securities for individuals as the existing value of securities in these cases already covers two year, four year and 10 year assurances.

Additionally, the instrument replaces references to newstart allowance with jobseeker payment, as a consequence of the cessation of newstart allowance and creation of a new jobseeker payment on 20 March 2020 by the Welfare Reform Act. While the Welfare Reform Act provides for existing instruments in force in relation to newstart allowance to continue in force as if made in relation to jobseeker payment, this amendment will update the instrument to reflect the new payment. The effect of the Welfare Reform Act is that the jobseeker payment is a recoverable payment under the assurance of support scheme and the income requirements for individual assurers are based on the rate of jobseeker payment. This maintains the arrangements that applied in relation to newstart allowance.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 is 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, the Minister has the power under subsection 106ZZGH(1) of the Act to amend the Determination.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Commencement

The instrument will commence the day after the instrument is registered on the Federal Register of Legislation.

Consultation

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

The following organisations were given the opportunity to comment on the instrument; no comments were received:

- Federation of Ethnic Communities' Council of Australia
- Migration Council Australia
- Migration Institute of Australia
- Settlement Council of Australia
- Refugee Council of Australia
- Australia Council of Social Services
- Economic Justice Australia.

These organisations represent sections of the Australian community that include individuals who may be affected by this instrument, such as migrants, refugees and welfare payment recipients.

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 25805).

Availability of merits review

Merits review is available for a decision by the Secretary to accept or reject an assurance of support under section 1061ZZGD of the Act (with decisions being made with reference to matters specified in the Determination). The instrument itself does not set out any Secretary discretions, rather, it amends non-discretionary aspects of the Determination.

Decisions to accept or reject an assurance of support can be subject to an internal merits review by an Authorised Review Officer and then, if the individual remains unsatisfied, they can seek merits review by the Administrative Appeals Tribunal.

Explanation of the provisions

Section 1

This section provides that the instrument is the Social Security (Assurances of Support) Amendment Determination 2021.

Section 2

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3

This section provides that the instrument is made under section 1061ZZGH of the Act.

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 amends section 2A to provide that the Determination will be repealed on 31 March 2024. The current repeal date in section 2A is 31 March 2021.

Item 2

Item 2 amends the definition **rate of newstart allowance** in subsection 5(1) to repeal references to “newstart allowance” and insert reference to “jobseeker payment”.

Item 3

Item 3 repeals references to “newstart allowance” from item 5 of the table in subsection 6(1) and substitutes references to “jobseeker payment”.

Items 4 to 7

These items repeal references to newstart allowance and insert references to jobseeker payment in subsections 15(2) and 16(2) (including references in the examples to those subsections).

Items 5 and 7 also omit the examples under subsections 15(2) and 16(2), and substitute new examples to reflect updated rates for 2020.

The new example under subsection 15(2) 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 jobseeker payment amount and base FTB child amount for illustration purposes.

The new example under subsection 16(2) illustrates how the income requirement (the total amount of combined assessable income that assurers who give assurance of support jointly have to demonstrate for the assurance to be accepted) is calculated. The example is an approximate annual jobseeker payment amount and base FTB child amount for illustration purposes.

Item 8

Item 8 repeals paragraphs 20(1)(a) and (b) of the Determination and substitutes new paragraphs.

New paragraph 20(1)(a) provides that the value of security given by a body for a 10 year assurance is \$20,000. This does not change the current value of security required for a 10 year assurance period. New paragraph 20(1)(b) clarifies that the value of security in any other case is \$10,000. This new paragraph ensures that the value of security required for all assurance periods under section 24 of the Determination (including periods of two years and four years) is specified.

Item 9

Item 9 provides that the amendments made in item 8 of the Schedule only apply to assurances of support given on or after the commencement of this instrument. An assurance of support may be given (and accepted by the Secretary) after a person has applied for a visa, but before a decision has been made in respect of their visa application. Item 9 ensures that this instrument does not impose new obligations on a person who has given an assurance of support before this instrument commences.

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 2021

The Social Security (Assurances of Support) Amendment Determination 2021 (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 Act).

The amendments made by the instrument:

- make 31 March 2024 the new repeal date of the Social Security (Assurances of Support) Determination 2018 (the Determination) (the current repeal date is 31 March 2021);
- clarify the values of securities for bodies under section 20 of the Determination, where the assurance period is for four years; and
- replace references to newstart allowance with jobseeker payment, as a consequence of the cessation of newstart allowance and creation of a new jobseeker payment on 20 March 2020 by the *Social Services Legislation Amendment (Welfare Reform) Act 2018* (the Welfare Reform Act).

Background

The Determination sets out key requirements underpinning the Assurance of Support scheme. 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. An assurance of support is a legally binding commitment by an eligible Australian resident (the assurer) to support a new visa entrant (the assuree) for the duration of the assurance period and to repay any recoverable social security payments made to the assuree during that period.

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);
- the right to an adequate standard of living contained in article 11(1) of the ICESCR;
- the right to equality and non-discrimination as contained in articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to freedom of movement as contained in articles 12 and 13 of the ICCPR;
- the right to protection of the family as contained in articles 23 and 17(1) of the ICCPR and article 10 of the ICESCR; and
- the rights of parents and children as contained in article 3 of the *Convention on the Rights of the Child* and article 24(1) of the ICCPR.

The right to social security and an adequate standard of living

This instrument does not limit a permanent visa holder's right to social security and an adequate standard of living after migrating to Australia, once an assurance of support has been provided. These visa holders will have access to Australia's social security system where eligible and subject to meeting any existing waiting periods.

The commitment to give an assurance of support may be secured by a security (or bond). If the assurer is not able to provide adequate support to the visa entrant during the assurance period, the visa holder may be eligible for a social security payment. In this event, the security will be used in the first instance to repay any recoverable social security payments made to the visa holder during the assurance period. The value of the security varies depending on the length of the assurance period.

The instrument clarifies that the value of security required for bodies in all cases other than where a 10 year assurance period applies is \$10,000. This ensures that this value of security covers both two year and four year assurances of support. This will not impact or restrict the right to social security or an adequate standard of living for either the assurer or the visa holder. There is no change to the actual amount of this value of security. There is also no change to the current value of security required for a 10 year assurance period.

The amendments to replace newstart allowance with jobseeker payment in line with the Welfare Reform Act will not affect the current operation of the Determination and do not restrict the right to social security or an adequate standard of living.

The right to equality and non-discrimination

This instrument engages the right to equality and non-discrimination. The differential treatment of migrants subject to an assurance of support compared to other migrants, reflects the purpose of the Assurance of Support scheme, which is to allow migrants with a higher likelihood of needing income support payments (such as parents of Australian residents) entry into Australia, while protecting Australian Government social security outlays.

To the extent that the Assurance of Support scheme, as provided for under Chapter 2C of the Act and under the Determination, limits the right to equality and non-discrimination, this is reasonable and proportionate to achieving the legitimate purpose of the Assurance of Support scheme.

The right to freedom of movement, the protection of the family, and rights of parents and children

This instrument does not change or impact on current arrangements with regards to the right of visa holders to freedom of movement, the protection of the family, and rights of parents and children.

Migrants will continue to be able to apply for a visa to come to, or remain in, Australia permanently (including to reunite with family) and have their visa application granted, subject to meeting the eligibility criteria including, where relevant, obtaining an assurance of support. The instrument does not in practice change the requirements that must be met for a person to give such an assurance of support.

To the extent that the Assurance of Support scheme, as provided for under Chapter 2C of the Act and under the Determination, limits the right to freedom of movement, the protection of the family, and rights of parents and children, this is reasonable and proportionate to achieving the legitimate purpose of the Assurance of Support scheme.

Conclusion

The instrument is compatible with human rights. It does not limit the right to social security and an adequate standard of living for visa entrants. To the extent that it may limit the rights to equality and non-discrimination, freedom of movement, the protection of the family, and rights of parents and children, that limitation is legitimate, reasonable, necessary and proportionate in the context of ensuring that an assurer can meet their obligations to provide support where assurance is required, consistent with the purpose of the Assurance of Support scheme.

Anne Ruston, Minister for Families and Social Services