

EXPLANATORY STATEMENT

Social Security (Administration) Act 1999

Social Security (Administration) (Authorised Certifier) Amendment (Additional Classes of Persons) Determination 2024

Purpose

The *Social Security (Administration) (Authorised Certifier) Amendment (Additional Classes of Persons) Determination 2024* (Amendment Determination) amends the *Social Security (Administration) (Authorised Certifier) Determination 2019* (Determination) to specify additional classes of persons as authorised certifiers for the purposes of verifying that a social security recipient is alive through the proof of life certificate requirements in the *Social Security (Administration) Act 1999* (Act). The additional classes are officials of the overseas pension agency or authority responsible for the administration and payment of pensions and benefits in the country, or the municipal authority, which governs or administers the locality or region of the place in which the social security recipient resides.

The expansion in the classes of persons who are authorised certifiers will make it easier for pensioners living overseas to comply with the requirement to provide a proof of life certificate, while still maintaining the integrity of the measure.

Background

Proof of life certificates

The Act allows the Secretary to require certain social security recipients aged 80 years and over, who have been absent from Australia for at least two years, to provide a proof of life certificate at least once every two years in accordance with a notice sent by the Secretary. The policy intent of this measure is to maintain the integrity of the social security system by ensuring pensioners living overseas are still alive and entitled to payment.

Subsections 63(2AA), (2AB) and (2AC) of the Act set out the circumstances under which proof of life certificates are to be given to the Secretary.

Subsection 63(2AA) states that the Secretary may require a person to provide a proof of life certificate if that person is at least 80 years old, has been continuously absent from Australia in the last two years, and is receiving Age Pension, Carer Payment or Disability Support Pension. The majority of social security recipients affected receive Age Pension.

Subsection 63(2AB) states the Secretary may issue a notice requiring the person, within 13 weeks, to provide a proof of life certificate that relates to themselves and has been completed within that 13 week period. If the notified person enters Australia within the 13 week period, they do not need to provide a proof of life certificate.

Where a person's circumstances continue to meet subsection 63(2AA) of the Act, the Secretary must, under subsection 63(2AC), notify the person that a proof of life certificate is required at least once every two years.

Section 63A of the Act outlines the requirements for a valid proof of life certificate. Subsection 63A(4) provides that a proof of life certificate, that relates to a person, must include a statement by an authorised certifier to the effect that:

- the authorised certifier has sighted the person while in the physical presence of the person
- the authorised certifier has verified the identity of the person using the method, or one of the methods, set out in the approved form, and
- the authorised certifier is satisfied that the person is alive.

Under subsection 63A(8) of the Act, an authorised certifier is a person included in a class of persons specified in a determination under subsection 63A(9). Subsection 63A(9) provides for the Secretary to determine that one or more classes of persons are authorised certifiers for the purpose of section 63A of the Act.

Authorised certifiers

The Determination specifies classes of persons recognised under Australian law and in the social security recipient's place of residence for their profession or occupation as authorised certifiers. This is to ensure proper verification of the identity and status of the person. In order to make the certification process as easy as possible for pensioners living overseas, a range of different classes of persons are authorised to certify a proof of life certificate, including doctors, lawyers, police officers, notaries public and Australian consular officials.

However, at times pensioners living overseas have found it difficult to complete the proof of life certificate requirements based on the current list of authorised certifiers.

The effect of the Amendment Determination is to amend section 5 of the Determination to include additional classes of persons as authorised certifiers. These additional classes are officials of overseas pension agencies and municipal authorities. Pensioners living overseas are often already interacting with the local pension agency in relation to their social security payment, particularly pensioners residing in a country with which Australia has a social security agreement, and with the local municipal authority in relation to birth, death and marriage registration and life confirmation services. The expansion of the current list of authorised certifiers will make it easier for pensioners living overseas to comply with the proof of life certificate requirements, while still maintaining the integrity of the verification process.

Commencement

The Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Authority

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. The Secretary has the power under subsection 63A(9) of the Act to amend the Determination.

Consultation

The amendments respond to feedback received from stakeholders, including pensioners living overseas and overseas pension agencies.

Impact Analysis

The Department of Social Services consulted with the Office of Impact Analysis (OIA) who confirmed an Impact Analysis is not required (OIA Reference: OIA24-06394).

The Amendment Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal compliance costs or competition impact.

Availability of independent review

A decision made under the Act, as informed by the Determination, is subject to internal and external review under Parts 4 and 4A of the Act.

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

Explanation of the provisions

Section 1

This section provides that the name of the Amendment Determination is the *Social Security (Administration) (Authorised Certifier) Amendment (Additional Classes of Persons) Determination 2024*.

Section 2

This section states that the Amendment Determination commences on the day after it is registered.

Section 3

This section provides that the authority for making the Amendment Determination is subsection 63A(9) of the Act.

Section 4

Section 4 provides that the instruments that are specified in a Schedule to the Amendment Determination are amended or repealed as set out in the applicable items of the Schedule, and any other item in a Schedule to the Amendment Determination has effect according to its terms.

Schedule 1

Schedule 1 outlines the following amendments to the Determination.

Item 1 inserts new definitions of the terms “municipal authority” and “pension agency” into section 4 of the Determination. The new definitions have been inserted for the purposes of the amendment to section 5 of the Determination made by **item 2** of this Schedule.

The term “municipal authority” has been broadly defined as including the local government authority, agency, corporation, department, instrumentality or other local or regional political unit which governs or administers the locality or region of the place in which the social security recipient resides. This is intended to include authorities such as local councils, which deal with matters such as birth, death and marriage registration, and life confirmation services.

The term “pension agency” is defined as being the pension agency or authority responsible for the administration and payment of pensions and benefits in the country in which the social security recipient resides. This is intended to capture agencies such as the equivalent of Services Australia in other countries, including the relevant competent institutions under Australia’s international social security agreements. Pensioners living overseas will often have dealings with the local pension agency, either in relation to a social security payment they are receiving from that country or, if the country has a social security agreement with Australia, in relation to their Australian pension.

Item 2 amends the Determination to insert new paragraph 5(3)(c) to include officials (however described) of a “municipal authority” or “pension agency” in the classes of persons who are authorised to certify a proof of life certificate for the purposes of section 63A of the Act.

An official of a municipal authority or pension agency is intended to include a person employed by, or engaged to provide services for, such an authority or agency.

The addition of new authorised certifiers will provide additional options for pensioners living overseas to provide a proof of life certificate that complies with the requirements in section 63A of the Act. The amendment will make it easier for pensioners living overseas to comply, as they will be able to have their proof of life certificate certified by an official of a municipal authority or pension agency, with which they are already likely to be familiar.

Statement of Compatibility with Human Rights

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

Social Security (Administration) Act 1999

Social Security (Administration) (Authorised Certifier) Amendment (Additional Classes of Persons) Determination 2024

The *Social Security (Administration) (Authorised Certifier) Amendment (Additional Classes of Persons) Determination 2024* (Amendment 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 Amendment Determination amends the *Social Security (Administration) (Authorised Certifier) Determination 2019* (Determination) to specify additional classes of persons as authorised certifiers for the purposes of verifying that a social security recipient is alive through the proof of life certificate requirements in the *Social Security (Administration) Act 1999* (Act). The additional classes are officials of the overseas pension agency of the country, or the municipal authority which governs or administers the locality or region, in which the social security recipient resides.

The expansion in the classes of persons who are authorised to certify a proof of life certificate for the purposes section 63A of the Act will make it easier for pensioners living overseas to comply with the requirement to provide a proof of life certificate.

Human rights implications

The Amendment Determination engages Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises ‘*the right of everyone to social security, including social insurance*’. The ICESCR requires a country to, within its maximum available resources, provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Amendment Determination facilitates and improves the administration of the proof of life requirements currently contained in the Act.

The proof of life requirements in the Act were intended to maintain the integrity of the social security system by ensuring pensioners living overseas are still alive and entitled to payment. The arrangements are similar to the life certificates or proof of life requests that are commonly used to confirm eligibility for pensions by many other countries, and have been in use in some countries for more than a decade.

As pensioners living overseas are required to have their proof of life certificates verified by an “authorised certifier”, the Amendment Determination provides additional options to satisfy this requirement. This will make the process easier for pensioners living overseas, while safeguarding the integrity of the verification process.

Conclusion

The purpose of the Amendment Determination is to give effect to the proof of life certificate requirements in the Act, by determining additional classes of persons who can verify a social security recipient's proof of life certificate. This does not limit a person's ability to access social security payments or maintain an adequate standard of living.

Ray Griggs AO CSC, Secretary of the Department of Social Services