

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Automatic Issue Health Care Card–Residence Requirement) Declaration 2024

Purpose

The *Social Security (Automatic Issue Health Care Card–Residence Requirement) Declaration 2024* (the Declaration) repeals the *Social Security (Class of Visa–Automatic Issue Health Care Card–Residence Requirement) Declaration 2018* (2018 Declaration), and specifies the class of visa that meets the residence requirement for the automatic issue health care card (HCC). The Declaration also declares persons who are workers participating in the Pacific Australia Labour Mobility scheme (the PALM scheme), and relevant members of their family unit, for the purposes of meeting the HCC residence requirement. Where such visa holders or persons otherwise qualify for a HCC, they will be able to access the concessions available to HCC holders.

Background

Pacific Australia Labour Mobility scheme

The PALM scheme enables eligible employers to hire workers from select Pacific countries and Timor-Leste to fill roles in unskilled, low-skilled and semi-skilled positions in rural and regional Australia, and nationally for the agriculture sector.

The PALM scheme is central to Australia’s relationship with Pacific island countries and Timor-Leste. It develops skills, addresses youth unemployment and supports economic integration of our region.

Under the “Enhancing the Pacific Australia Labour Mobility Scheme” 2022-23 Budget measure, primary visa holders participating in the PALM scheme on long-term placements of one to four years (“long-stay PALM stream participants”) can bring their partners and children to Australia, with the support of their employer. The roll-out of family accompaniment will commence with a pilot including a limited number of families selected in accordance with program criteria.

Amendments have been made to the *A New Tax System (Family Assistance) Act 1999* by the *Social Services and Other Legislation Amendment (Australia’s Engagement in the Pacific) Act 2023* to support implementation of family accompaniment under the PALM scheme through allowing workers and their families, who are approved for family accompaniment, to access family tax benefit and child care subsidy.

Extending access to these payments is intended to provide financial assistance to families of PALM scheme workers while they are raising children in Australia and reduce barriers to workforce participation by family members. Without this support, families reunited in Australia through family accompaniment may face hardship that could jeopardise the success of their work placement and the objective of the family accompaniment policy.

Similarly, it is intended that PALM scheme workers and their family members who attract family tax benefit are also able to access a HCC and associated concessions, subject to meeting all relevant qualification requirements.

Health care card qualification

Subsection 1061ZK(1) of the *Social Security Act 1991* (the Act) provides that a person is qualified for an automatic issue HCC if section 1061ZK applies to the person on that day. Subject to meeting all relevant HCC qualification requirements, a person may qualify for a HCC under subsection 1061ZK(4) of the Act where they are entitled to family tax benefit by instalment, or under subsection 1061ZK(4A) of the Act where they have a regular care child, and have a nil income excess for family tax benefit Part A.

Subsection 1061ZN(1) of the Act provides that section 1061ZK only has effect in relation to a person on a day on which the person is in Australia and is, among other things, the holder of a visa included in a class of visas determined by the Minister for the purposes of subparagraph 1061ZN(1)(a)(ii), or is a person declared by the Minister for the purposes of subparagraph 1061ZN(1)(a)(iii).

The 2018 Declaration was made under subparagraph 1061ZN(1)(a)(ii) of the Act, and specifies a class of visas for the purposes of the HCC residence requirement. The Declaration repeals the 2018 Declaration and specifies the same class of visas for the purposes of subparagraph 1061ZN(1)(a)(ii). This is the class of visas that attracts family tax benefit (subject to meeting all other eligibility requirements) under subsection 21(1A) of the *A New Tax System (Family Assistance) Act 1999*. These are subclasses 060, 070, 309, 449, 785, 786, 790 and 820 (these subclasses include temporary partner, temporary humanitarian and protection, and certain bridging visas). The Declaration does not intend to make any changes in this regard.

However, the Declaration is also made under subsection 1061ZN(2), for the purposes of subparagraph 1061ZN(1)(a)(iii). There is currently no legislative instrument for these purposes. Subsection 1061ZN(2) provides the Minister may make a legislative instrument to declare that a person who is included in a specified class of persons, and is or has been in Australia in specified circumstances, is a person to whom subparagraph 1061ZN(1)(a)(iii) applies. The class of persons who satisfy the residence requirement under this subparagraph are still required to meet all other requirements for the purposes of qualifying for a HCC, including being in receipt of a qualifying payment, such as family tax benefit. This means that a person who has been (but is no longer) in Australia in the specified circumstances may satisfy the residence requirement but not meet the other requirements for the HCC. For example, family tax benefit is only paid to people who currently hold a relevant visa type and are either in Australia or temporarily absent for less than 6 weeks. A person who no longer holds a relevant visa type and/or has been outside Australia for more than 6 weeks would not be eligible to receive family tax benefit and therefore would not meet all requirements to qualify for a HCC.

The Declaration provides that workers in the PALM scheme who are approved for family accompaniment, and members of their family unit approved to come to Australia, are declared persons for the purposes of subparagraph 1061ZN(1)(a)(iii). This means that subject to all other qualification requirements being satisfied, such a person may obtain a HCC, and access available concessions.

HCC holders may receive medicines listed on the Pharmaceutical Benefits Scheme at the concessional rate, bulk-billed General Practitioner appointments, and a reduction in the cost of out-of-hospital medical expenses, above a concessional threshold, through access to the lower threshold of the Extended Medicare Safety Net.

Commencement

The Declaration 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 Minister has the power under subparagraph 1061ZN(1)(a)(ii) and subsection 1061ZN(2) of the Act to repeal the 2018 Declaration and make the Declaration.

Consultation

The Department of Social Services consulted with the Department of Foreign Affairs and Trade, the Department of Home Affairs, the Department of Employment and Workplace Relations, the Department of Health, the Department of Education and Services Australia on the text of the Declaration.

Impact Analysis

The Declaration does not require an Impact Analysis because it is not regulatory in nature, will not impact on business activity and will have no or minimal compliance costs or competition impact (OBPR22-02810).

Availability of independent review

A decision made under the social security law, as informed by the Declaration, is subject to internal and external review under Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

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

Explanation of Provisions

Section 1 provides that the name of the Declaration is the *Social Security (Automatic Issue Health Care Card–Residence Requirement) Declaration 2024*.

Section 2 provides that the Declaration is to commence the day after the Declaration is registered on the Federal Register of Legislation.

Section 3 provides that the authority for making the Declaration is subparagraph 1061ZN(1)(a)(ii) and subsection 1061ZN(2) of the Act.

Section 4 sets out the operation of the Schedules and provides that any instrument specified in a Schedule to the Declaration is amended or repealed according to the terms of the relevant Schedule.

Section 5 sets out the definitions of the terms used in the Declaration.

A reference to the “Act” is a reference to the *Social Security Act 1991*.

The term “member of the family unit” is defined has the same meaning as in the *Migration Act 1958*.

A “member of the family unit” is defined in subsection 5(1) of the *Migration Act 1958* as having the meaning given by the regulations made for the purposes of the definition. As per regulation 1.12 of the *Migration Regulations 1994*, for a PALM scheme participant, a “member of the family unit” includes the worker’s spouse or de facto partner, a child or step-child who is aged up to 18, or who is aged 18 to 23 and is dependent on the PALM scheme participant or their spouse or de facto partner, or who has turned 23 and is dependent on the PALM scheme participant or their spouse or de facto partner due to being incapacitated, and any dependent child of a child or step-child who is a “member of the family unit”.

Section 6 determines the class of visa for the purposes of subparagraph 1061ZN(1)(a)(ii) of the Act. These are the same as the visas currently included in the class determination in the 2018 Declaration, and the Declaration is not intended to make any changes to this class. The Declaration determines the following class of visas:

- (a) Subclass 060 (Bridging F);
- (b) Subclass 070 (Bridging (Removal Pending));
- (c) Subclass 309 (Partner (Provisional));
- (d) Subclass 449 (Humanitarian Stay (Temporary));
- (e) Subclass 785 (Temporary Protection);
- (f) Subclass 786 (Temporary (Humanitarian Concern));
- (g) Subclass 790 (Safe Haven Enterprise); and
- (h) Subclass 820 (Partner).

Section 7 declares particular persons to be a person to whom subparagraph 1061ZN(1)(a)(iii) of the Act applies. This means that such a person will satisfy the residence requirement for the purposes of qualification for a HCC, such as under section 1061ZK. The particular persons who satisfy the residence requirement for the purposes of qualification for a HCC under this section are still required to meet all other requirements for the purposes of qualifying for a HCC, including receipt of a qualifying payment, such as family tax benefit.

Firstly, paragraph 7(a) declares a person who is a participant, as a worker, in the PALM scheme, and is or has been in Australia as the holder of a visa issued for that purpose. Currently, PALM scheme workers are issued with a visa referred to in the *Migration Act 1958* as a Subclass 403 (Temporary Work (International Relations)) visa.

Further, the PALM scheme worker must have been approved by a Department in administering the PALM scheme to bring members of the family unit of the PALM scheme worker to Australia. Currently, the Department of Foreign Affairs and Trade and the Department of Employment and Workplace Relations are responsible for administering the PALM scheme, and one of these departments will approve PALM scheme workers for family accompaniment.

Secondly, paragraph 7(b) declares a person who is a member of the family unit of a PALM scheme worker, and is or has been in Australia as the holder of a visa issued for that purpose. In this situation, the PALM scheme worker must satisfy the requirements in paragraph 7(a), as discussed above.

In relation to such a PALM worker, a “member of the family unit” is defined in section 5 of the Declaration, as discussed above. Where a PALM scheme worker has been approved for family accompaniment, members of the worker’s family unit will be issued with a visa referred to in the *Migration Act 1958* as a Subclass 403 (Temporary Work (International Relations)) visa.

Schedule 1

Item 1 repeals the whole of the *Social Security (Class of Visa–Automatic Issue Health Care Card–Residence Requirement) Declaration 2018*. This declaration is no longer required as the content of that declaration, being the class of visas determined for the purposes of subparagraph 1061ZN(1)(a)(ii) of the Act, is determined by section 6 of the Declaration.

Statement of Compatibility with Human Rights

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

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The *Social Security (Specified Class of Persons–Automatic Issue Health Care Card–Residence Requirement) Declaration 2024* (the Declaration) 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 Declaration repeals the *Social Security (Class of Visa–Automatic Issue Health Care Card–Residence Requirement) Declaration 2018* (the 2018 Declaration), specifies the class of visa and declares persons who are workers participating in the Pacific Australia Labour Mobility (PALM) scheme, and relevant members of their family unit, for the purposes of meeting the health care card (HCC) residence requirement.

Where such persons otherwise qualify for a HCC, they will be able to access the concessions available to HCC holders. Those concessions include access to concessional medicines under the Pharmaceutical Benefits Scheme and access to the lower threshold of the Extended Medicare Safety Net.

The Declaration is made under subparagraph 1016ZN(1)(a)(ii) and subsection 1061ZN(2) of the *Social Security Act 1991*.

Human rights implications

The Declaration is compatible with and does not detract from any of the applicable rights or freedoms of individuals.

The Declaration maintains eligibility for the automatic issue HCC for holders of the same class of visas as the 2018 Declaration. These are holders of temporary partner, temporary humanitarian and protection, and certain bridging visas.

The Declaration also serves to extend eligibility for the automatic issue HCC to certain PALM scheme workers and their relevant family members. These PALM families will benefit positively in terms of their right to health through qualification for a HCC, by having access to concessional rates of health care and pharmaceuticals. This will enhance the affordability of health care to these individuals, which will have a positive impact on their quality of life and standard of living in Australia.

The Declaration supports relevant temporary visa holders, including PALM scheme workers and their relevant family members, to access concessional health care benefits under the right to health incorporated in the relevant conventions to which Australia is a party, as listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The Declaration is compatible with human rights as it does not raise any human rights issues and, in effect, enhances the rights of individuals to accessible and affordable health care.

The Hon Amanda Rishworth MP, Minister for Social Services