EXPLANATORY STATEMENT

***Social Security (Administration) Act 1999***

## *Social Security (Dependants—Concession Cards) Amendment (Visa Holders Connected with the Pacific Australia Labour Mobility Scheme) Declaration 2024*

**Purpose**

The *Social Security (Dependants—Concession Cards) Amendment (Visa Holders Connected with the Pacific Australia Labour Mobility Scheme) Declaration 2024* (the Amendment Declaration) amends the *Social Security (Dependants—Concession Cards) Declaration 2018* (the Declaration) to provide for the partner of a participant as a worker in the Pacific Australia Labour Mobility scheme (the PALM scheme) to be included as a dependant on a health care card (HCC) issued to the worker. This enables partners of eligible workers in the PALM scheme 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.

Subject to meeting all relevant HCC qualification requirements, including the residence requirement in section 1061ZN of the *Social Security Act 1991*, a PALM worker may qualify for a HCC under subsection 1061ZK(4) of the *Social Security Act 1991* where they are entitled to family tax benefit by instalment, or under subsection 1061ZK(4A) of the *Social Security Act 1991* where they have a regular care child. Similarly, it is intended that partners of PALM scheme workers are also able to access concessions arising from the worker’s HCC.

At this time PALM workers and their family members are ineligible for any payments that would enable them to qualify for a pensioner concession card (PCC). Accordingly, the Amendment Declaration will not enable such persons to access concessions arising from a PCC.

Listing of dependants on PCCs and HCCs

Subparagraph 240B(4)(a)(iii) of the *Social Security (Administration) Act 1999* (Administration Act) provides that a PCC or a HCC is not to include the name of the partner of the holder of the card as a dependant of the card holder, unless the partner is in Australia and is a person declared by the Minister to be a person to whom this subparagraph applies.

Subsection 240B(5) of the Administration Act provides that the Minister may, by legislative instrument, 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 240B(4)(a)(iii) applies.

The Declaration provides for specified classes of persons who are, or have been, in Australia in specified circumstances to be included on a PCC or HCC as a dependant of the holder of the card. Section 5 of the Declaration provides the current specified classes of persons and specified circumstances as temporary visa holders, and holders of a visa listed in subsection 5(2), who are, or have been, in Australia as the holder of the relevant visa.

The Amendment Declaration amends section 5 of the Declaration to specify a new class of persons and specified circumstances. The new partners eligible for inclusion on a HCC holder’s card as a dependant are partners of workers in the PALM scheme who have had approval to bring members of their family unit to Australia.

This enables such partners to access the concessions available to the HCC holder. Those concessions include access to concessional medicines under the Pharmaceutical Benefits Scheme, 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.

While section 240B of the Administration Act and the Declaration also apply to dependant partners of PCC holders, PALM workers and their partners are ineligible for any payments that would qualify them for a PCC.

**Commencement**

The Amendment 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 subsection 240B(5) of the Administration Act to amend 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 Amendment Declaration.

**Impact Analysis**

The Amendment 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 Administration Act.

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

### Explanation of the provisions

**Section 1** provides the name of the Amendment Declaration.

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

**Section 3** provides that the authority for making the Amendment Declaration is subsection 240B(5) of the Administration Act.

**Section 4** provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1** amends section 4 of the Declaration to insert a definition of the term “member of the family unit” as having 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 worker, a “member of the family unit” relevantly includes the worker’s spouse or de facto partner.

**Item 2** amends section 5 of the Declaration to insert new subsection 5(3), which declares certain persons to be a person to whom subparagraph 240B(4)(a)(iii) of the Administration Act applies.

New subsection 5(3) provides for the eligibility for inclusion of the HCC holder’s partner, as a dependant, on the basis that the card holder 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.

The eligibility of the PALM scheme worker’s partner to be included as a dependant on the worker’s HCC is established on the basis that the partner is, or has been, in Australia on the basis that they have been issued with a visa as a “member of the family unit” of the PALM scheme worker. A new definition of the term “member of the family unit” is inserted into section 4 of the Declaration, as discussed at item 1 above. Where a PALM scheme worker has been approved for family accompaniment, members of the worker’s family unit are issued with a visa referred to in the *Migration Act 1958* as a Subclass 403 (Temporary Work (International Relations)) visa.

**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 (Dependants–Concession Cards) Amendment (Visa Holders Connected with the Pacific Australia Labour Mobility Scheme) Declaration 2024***

The *Social Security* (*Dependants–Concession Cards) Amendment (Visa Holders Connected with the Pacific Australia Labour Mobility Scheme) Declaration 2024* (Amendment 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 purpose of the Amendment Declaration is to amend the *Social Security* (*Dependants–Concession Cards) Declaration 2018* toprovide for the partner of a participant as a worker in the Pacific Australia Labour Mobility scheme (the PALM scheme) to be included as a dependant on a health care card (HCC) issued to the worker.

The Amendment Declaration enables partners of workers in the PALM scheme to access the concessions available to the HCC holder. 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 Amendment Declaration is made under subsection 240B(5) of the *Social Security (Administration) Act 1999*.

**Human rights implications**

The Amendment Declaration is compatible with and does not detract from any of the applicable rights or freedoms of individuals. With eligibility for inclusion on the HCC of the PALM scheme worker as a dependant, their partner will benefit positively in terms of their right to health 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 Amendment Declaration provides the partners of PALM scheme workers who hold a HCC with access to 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 Amendment 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**