

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

A New Tax System (Family Assistance) Act 1999

***Family Assistance (Pacific Australia Labour Mobility Scheme—Child Care Subsidy)
Determination 2024***

AUTHORITY

The *Family Assistance (Pacific Australia Labour Mobility Scheme—Child Care Subsidy) Determination 2024* (Determination) is made under subsection 85BB(4) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

PURPOSE AND OPERATION

The Pacific Australia Labour Mobility (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 can bring their partners and children to Australia with the support of their employer. The roll-out of this family accompaniment policy initiative will commence with a pilot including a limited number of families selected in accordance with program criteria.

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. This will also be the case for members of the worker’s family unit brought to Australia under family accompaniment.

Amendments have been made to the Family Assistance Act 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.

Subsection 85BA(1) of the Family Assistance Act provides that an individual is eligible for child care subsidy (CCS) for a session of care provided by an approved child care service to a child if the individual satisfies the eligibility criteria in paragraphs (a) to (e).

One of the eligibility criteria is that, at the time the session is provided, the individual or the individual's partner meets the residency requirements in section 85BB (subparagraph 85BA(1)(a)(iv)).

Subsection 85BB(3) relevantly provides that an individual or the individual's partner meets the residency requirements if the individual is the holder of a Subclass 403 (Temporary Work) (International Relations) visa, is either a participant, as a worker, in the PALM scheme or a relevant member of their family unit, and is in a class determined under subsection 85BB(4).

Subsection 85BB(4) relevantly provides that the Minister may determine classes of persons for the purposes of paragraph 85BB(3)(c) by legislative instrument. Subsection 85BB(6) provides that a class of persons for these purposes may be determined by reference to the fact that an individual holds a visa of a specified kind, for example, a visa of a kind referred to in a specified way in the regulations under the *Migration Act 1958*.

The Determination is made under subsection 85BB(4) of the Family Assistance Act, and prescribes that PALM scheme workers who have been approved for family accompaniment, and members of their family unit, are classes of persons for the purposes of paragraph 85BB(3)(c). This enables these PALM scheme workers and their relevant family members to be eligible for CCS, subject to meeting all other relevant requirements.

IMPACT ANALYSIS

The Determination 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).

COMMENCEMENT

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

CONSULTATION

The Department of Education 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 Social Services and Services Australia on the text of the Determination. The agencies consulted were supportive of the Determination.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Family Assistance (Pacific Australia Labour Mobility Scheme—Child Care Subsidy) Determination 2024

The Family Assistance (Pacific Australia Labour Mobility Scheme—Child Care Subsidy) Determination 2024 (the 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 Determination specifies that workers participating in the Pacific Australia Labour Mobility (PALM) scheme who are approved for family accompaniment, and relevant members of their family, are classes of individuals who meet the residency requirements under the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act). This enables these PALM scheme workers and their relevant family members to be eligible for Child Care Subsidy (CCS), subject to meeting all other relevant requirements.

The Determination is made under subsection 85BB(4) of the Family Assistance Act.

Human rights implications

The Determination engages the following human rights:

- Rights to social security and an adequate standard of living
- Rights of parents and children
- Right to privacy
- Rights to equality and non-discrimination.

Right to social security and an adequate standard of living

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to social security and requires a social security scheme to be established under domestic law that provides a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs. Article 26 of the Convention on the Rights of the Child (CRC) requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child.

Article 11 of the ICESCR recognises the right to an adequate standard of living, which provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

The Determination promotes the rights to social security and an adequate standard of living by allowing eligible PALM scheme participants and their family members to access CCS. This payment helps eligible families with the cost of raising children.

Access to most social security and family assistance payments is generally limited to Australian citizens and permanent visa holders. This reflects the residence-based nature of the Australian social security and family assistance systems, which are different to the contributory systems that operate in most other countries. As a result, most temporary visa holders do not have access to social security or family assistance payments.

Rights of parents and children

Article 3 of the CRC and Article 24(1) of the International Covenant on Civil and Political Rights (ICCPR) recognise the rights of parents and children. In addition to the rights enjoyed by all persons under human rights treaties, parents and children enjoy special rights, particular to their status.

The Determination promotes these rights by supporting access to CCS for eligible PALM scheme participants and family members on a subclass 403 (Temporary Work (International Relations)) visa, who would otherwise be ineligible as temporary visa holders.

Right to privacy

Article 17 of the ICCPR recognises that no one shall be subjected to arbitrary or unlawful interference with their privacy. The disclosure of personal information without a person's consent will engage, and limit, the protection from arbitrary and unlawful interference with privacy.

The right in Article 17 may be subject to permissible limitations, where the limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of "reasonableness" to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The Determination engages the right to privacy as data will be linked between Commonwealth departments to enable the administration of CCS payments to eligible PALM scheme participants, including verification of an individual's visa status and associated eligibility.

To the extent that the Determination may limit the right to privacy, the limitation is lawful and non-arbitrary. The linking of data between Commonwealth departments is limited to visa related information necessary to administer CCS payments, including verification of an individual's eligibility. This data linkage reduces the administrative burden for visa holders and facilitates the provision of financial support to eligible individuals.

Right to equality and non-discrimination

Article 2(2) of the ICESCR and Article 26 of the ICCPR recognise rights to equality and protection against discrimination on any ground. Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

The Determination engages the right to equality and non-discrimination by direct differential treatment of eligible PALM scheme participants and family members compared to other PALM scheme participants, other non-PALM subclass 403 (Temporary Work (International Relations)) visa holders, and holders of other temporary subclass visas. The intent is that eligible PALM scheme participants who have been approved for family accompaniment (and their families) will be able to access CCS, if they are otherwise eligible under section 85BA of the Family Assistance Act, subject to meeting all other relevant requirements. Other temporary residents generally do not have access to family assistance payments and that will remain the case.

To the extent that the Determination limits the right to equality and non-discrimination, this is reasonable and proportionate to achieving the legitimate purposes of family accompaniment for the PALM scheme.

Family accompaniment for PALM scheme workers is designed to address the social impacts of long periods of family separation and build relationships with participating Pacific Island countries and Timor-Leste. PALM scheme workers are often engaged in lower skilled and lower paid industries than other temporary workers. Access to CCS supports the objectives of family accompaniment by ensuring families of PALM scheme workers are appropriately supported with the cost of raising children in Australia. Without this support, families reunited in Australia through family accompaniment may face hardship.

Conclusion

The Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Education, Jason Clare

FAMILY ASSISTANCE (PACIFIC AUSTRALIA LABOUR MOBILITY SCHEME—CHILD CARE SUBSIDY) DETERMINATION 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the name of the instrument is the *Family Assistance (Pacific Australia Labour Mobility Scheme—Child Care Subsidy) Determination 2024*.

Section 2: Commencement

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

Section 3: Authority

3. This section provides that the instrument is made under subsection 85BB(4) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

Section 4: Definitions

4. This section provides for definitions of the following terms used in the instrument.
5. The term ‘Act’ is defined as the *A New Tax System (Family Assistance) Act 1999*.
6. The term ‘member of the family unit’ of a person is defined as having the same meaning as in the *Migration Act 1958*. Subsection 5(1) of that Act defines this term as having the meaning given by the regulations made for the purposes of this definition. Regulation 1.12 of the *Migration Regulations 1994* sets out the meaning of this term. For a PALM scheme participant, a “member of the family unit” includes:
 - a. the worker’s spouse or de facto partner,
 - b. a child or step-child of the worker who is aged up to 18,
 - c. a child or step-child of the worker who is aged 18 to 22 and is dependent on the PALM scheme participant or their spouse or de facto partner,
 - d. a child or step-child of the worker who has turned 23 and is dependent on the PALM scheme participant or their spouse or de facto partner due to being incapacitated,
 - e. a dependent child of the persons mentioned in paragraphs b to d above.

Section 5: Eligibility for child care subsidy—prescribed classes of persons

7. This section is made for the purposes of paragraph 85BB(4)(b) of the Family Assistance Act and determines the classes of persons for the purposes of paragraph 85BB(3)(c).
8. Firstly, this section prescribes persons who have been approved by a Department, in the course of administering the PALM scheme, to bring members of the family unit of the PALM scheme worker to Australia. These persons are workers participating in the PALM scheme, as provided in subparagraph 85BB(3)(b)(i). 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.
9. Secondly, this section prescribes members of the family unit of a person approved to bring family members to Australia for family accompaniment. These are relevant family members of PALM scheme workers, who have been granted a visa on the basis that they are a member of the family unit of the PALM worker, as provided in subparagraph 85BB(3)(b)(ii). In relation to PALM workers, a “member of the family unit” is defined in section 4 of the instrument, as discussed above.
10. The effect of section 5 is that individuals in either of these prescribed classes may be eligible for CCS under section 85BA of the Family Assistance Act, subject to meeting all other relevant requirements.