EXPLANATORY STATEMENT

Social Security (Class of Visas—Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2005

The Social Security (Class of Visas—Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2005 (the determination) is made under subsection 739A(6) of the Social Security Act 1991 (the Act).

Purpose

The purpose of the determination is to enable any person who is the holder of a subclass 787 (Witness Protection (Trafficking) (Temporary)) visa or the holder of a subclass 852 (Witness Protection (Trafficking) (Permanent)) visa to be able to access special benefit without having to serve the newly arrived resident’s waiting period of 104 weeks, provided that the person was the former holder of a criminal justice stay visa granted under subsection 155(2) of the Migration Act 1958.

The holders of subclass 787 and 852 visas will have assisted in the administration of criminal justice in relation to the offence of people trafficking, sexual servitude or deceptive recruiting, and are at risk of significant personal danger if they were to return to their home country.

Background

Subsections 739A(1) and (5) of the Act provide that a person is subject to a newly arrived resident’s waiting period of 104 weeks if that person enters Australia on or after the commencement of subsection 739A(1) of the Act, or becomes the holder of a permanent visa, or becomes the holder of a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(1)(e) of the Act. Subsection 739A(1) of the Act commenced on 4 March 1997.

Subsection 739A(6) of the Act enables the Minister to make a determination that neither subsection 739A(1) nor (2) of the Act applies to a person who holds a visa or was a former holder of a visa in a class of visas for the purposes of this subsection.

Generally, any person granted a subclass 787 visa or a subclass 852 visa will have previously been granted a criminal justice stay visa and this visa has already been specified in a former subsection 739A(6) determination (see Social Security (Class of Visas—Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2004 see special gazette S 25 of 5 February 2004). This means that any person who was a former holder of a specified visa would not have to serve the 104 weeks newly arrived resident’s waiting period.
This disallowable instrument will ensure that only holders of a subclass 787 or 852 visa who were former holders of a criminal justice stay visa granted under subsection 155(2) of the Migration Act 1958 will be exempt from the newly arrived residents waiting period.

The Minister has also determined under subparagraph 729(2)(f)(v) of the Act that any person who is the holder of a subclass 787 visa will be able to access special benefit provided that the person was the former holder of a criminal justice stay visa granted under subsection 155(2) of the Migration Act 1958. A person who holds a subclass 852 visa will be able to access special benefit because this visa is a permanent visa meaning that the holder of which is an Australian resident.

Consultation

No consultation in relation to the determination was undertaken because this legislative instrument is of a minor or machinery nature that does not substantially alter existing arrangements.

Explanation of the provisions

Section 1 of the determination states the name of the determination.

Section 2 states that the determination commences on the day following the registration of the determination on the Federal Register of Legislative Instruments.

Section 3 provides that any person who is the holder of a subclass 787 (Witness Protection (Trafficking) (Temporary)) visa or the holder of a subclass 852 (Witness Protection (Trafficking) (Permanent)) visa will not be subject to a newly arrived resident’s waiting period.