EXPLANATORY STATEMENT

Social Security (Job Commitment Bonus – periods of continuous gainful work) Determination 2014 (the Determination)

Summary

The Determination is made by the Secretary of the Department of Employment under subsection 861(6) of the Social Security Act 1991 (the Act). Section 861(6) was inserted by the Social Security Legislation Amendment (Increased Employment Participation) Act 2014.

The Job Commitment Bonus provides an incentive to encourage young, long-term unemployed Australians to remain off income support payments. Broadly, a person is qualified to receive a payment of $2,500 if they:

- have been receiving Newstart Allowance or Youth Allowance¹ or a combination of both continuously for at least 12 months;
- cease to receive their payment while aged 18 or over and under 31;
- upon cessation of their payment, or within 30 days of such cessation, commence a period of 12 months of continuous gainful work; and
- do not receive an income support payment in relation to any day during the above 12 month period.

In addition, if the person completes a further 12 months of continuous gainful work immediately following the first 12 month period of gainful work, they may be eligible for another bonus of $4,000.

Subsections 861(5) and (6) provide that the Employment Secretary may, by legislative instrument under subsection 861(6), prescribe a period which will be taken not to break a period of continuous gainful work.

The Determination specifies periods which do not break a period of continuous gainful work of a person including periods of unpaid leave of no more than 28 days, and of paid leave.

Explanation of provisions

Sections 1 and 2 of the Determination are mechanical provisions that provide for the name of the Determination and its commencement, respectively.

Section 3 defines terms used in the Determination.

Subsection 4(1) provides that for the purposes of subsection 861(5) of the Act, the following periods do not break a period of continuous gainful work of a person:

(a) a period of authorised paid leave, whether the leave consists of annual leave, personal leave, carer’s leave, or another type of paid leave;

¹ Other than as Youth Allowance received as an apprentice or full-time student.
(b) periods of authorised unpaid leave of no more than 28 days, in total, in a work period; or

(c) periods, not exceeding five business days, between the end of gainful work undertaken by the person and the start of other gainful work by the person, provided that those periods do not exceed 28 days in total in a work period.

A work period is the period referred to in paragraph 861(1)(c) of the Act or the period referred to in paragraph 861(3)(b) of the Act. The reference to a work period in paragraph 4(1)(b) relates to both these periods, so that a period of authorised unpaid leave of no more than 28 days in the period referred to in paragraph 861(1)(c), and of no more than 28 days in the period referred to in paragraph 861(3)(c), will not break a period of continuous gainful work of a person.

‘Authorised’ paid or unpaid leave refers to authorisation by the person’s employer.

Paragraph 4(1)(b) means that the maximum number of days of authorised unpaid leave which will not break the continuity of the person’s work is 28 regardless of the number of jobs the person engaged in during the work period.

If a person has two or more jobs throughout the same 12 month period and takes, for example, 25 days unpaid leave from both or all jobs at the same time, this will be considered to be 25 days of unpaid leave and not 50 or more days of unpaid leave. Therefore, provided such leave is authorised, such leave would not in itself break the continuity of their work period.

If a person has more than one job and takes authorised unpaid leave from a job on a day when they undertake other gainful work which will attract a Job Commitment Bonus, the unpaid leave taken on that day will not count for the purpose of determining whether a person has taken more than 28 days of authorised unpaid leave in a work period.

Paragraph 4(1)(c) relates to the periods between the end of one job and the start of a new job or other gainful work, and not, for example, to periods away from work where a person remains with the same employer. It therefore does not apply, for example, to periods of unauthorised leave.

Subsection 4(2) provides that if paragraph (1)(c) does not apply to a period between the end of gainful work undertaken by a person and the start of other gainful work by the person, then that period does not break a period of continuous gainful work of the person if the Employment Secretary is satisfied in all the circumstances that it is appropriate for that period to not break a period of continuous gainful work of the person.

In other words, a period in between jobs of more than five business days will not prevent the person from meeting the continuous work requirement if the Employment Secretary is satisfied that in all the circumstances it is appropriate for that period to not break the continuity of the person’s gainful work.
Similarly, where a person has a number of periods away from gainful work between the end of gainful work and the start of other gainful work, then a period which causes the total of those periods to exceed 28 days in a work period (or any subsequent period between jobs or gainful work) would not break the continuity of the person’s gainful work if the Employment Secretary is satisfied that in all the circumstances it is appropriate for that period to not break the continuity.

**Consultation**

The Department of Human Services was consulted about this Determination.

**Regulatory Impact Analysis**

The Determination does not require a Regulatory Impact Statement (Office of Best Practice Regulation reference number 16944). The Determination is not regulatory in nature, will not impact on business activity and will not impact on compliance costs or competition.
Statement of Compatibility with Human Rights
Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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Overview of the Determination

The Determination is made by the Secretary of the Department of Employment under subsection 861(6) of the Social Security Act 1991 (the Act). Section 861(6) was inserted by the Social Security Legislation Amendment (Increased Employment Participation) Act 2014 (the Amending Act).

The Job Commitment Bonus provides an incentive to encourage young, long-term unemployed Australians to remain off income support payments. Broadly, a person is qualified to receive a payment of $2,500 if they:

- have been receiving Newstart Allowance or Youth Allowance² or a combination of both continuously for at least 12 months;
- cease to receive their payment while aged 18 or over and under 31;
- upon cessation of their payment, or within 30 days of such cessation, commence a period of 12 months of continuous gainful work; and
- do not receive an income support payment in relation to any day during the above 12 month period.

In addition, if the person completes a further 12 months of continuous gainful work immediately following the first 12 month period of gainful work, they may be eligible for another bonus of $4,000.

The Determination prescribes the periods which do not break a period of continuous gainful work of a person, including periods of unpaid leave of no more than 28 days, and of paid leave.

Human rights implications

The Determination engages the following human rights:

Right to social security and the right to an adequate standard of living

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security. Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions.

The Job Commitment Bonus is a new social security payment and promotes the right of recipients to social security and to an adequate standard of living. Recipients will not be limited or restricted in their future access to social security payments, subject to them meeting the usual eligibility requirements for particular payments.

² Other than Youth Allowance received as an apprentice or full-time student.
The Determination means that certain periods during which a person is not at work will not break the continuity of the person’s work for the purpose of assessing the person’s eligibility for the Job Commitment Bonus. This means that more people are likely to be eligible for the Job Commitment Bonus than would otherwise be the case. The Determination therefore promotes the rights to social security and an adequate standard of living while encouraging people to cease being dependent on income support and to move to a higher standard of living through engaging in gainful work.

**Right to work**

Article 6 of the ICESCR recognises the right to work. The Job Commitment Bonus will be made to eligible young Australian job seekers and will encourage them to engage with their right to work rather than remaining on income support. As noted above, the Determination means that more people are likely to be eligible for the Job Commitment Bonus. Accordingly more people are likely to engage with their right to work than would otherwise be the case.

**Right to equality and non-discrimination**

Article 2 of the ICESCR and article 26 of the International Covenant on Civil and Political Rights (ICCPR), recognise the right to equality and non-discrimination on, among other grounds: race, sex, colour, language, national origin or ‘other status’. Employment type has been considered to constitute ‘other status’ for the purposes of articles 2 and 26.

The Determination might be considered to involve differential treatment based on employment type in that it does not make specific provision for seasonal or other work which can be done at any time of the year but which cannot always be undertaken continuously.

Accordingly those who engage in seasonal work or other less continuous work, may have more difficulty in establishing that they have engaged in 12 or 24 months of continuous gainful work than those who undertake other types of gainful work.

As outlined below, to the extent that the Determination may involve differential treatment based on employment type, this can be justified because it is for a legitimate aim, based on reasonable and objective criteria, and proportionate to the aims of the Job Commitment Bonus.

The aim of the Job Commitment Bonus is to encourage young people to make a real commitment to improving their employment skills and experience, including by being part of the workforce on a consistent basis. This object would be frustrated by permitting people to become eligible for a Job Commitment Bonus through sporadic or intermittent workforce participation.

Accordingly to the extent differential treatment may be involved it is for a legitimate aim, and it is based on the reasonable and objective criterion of whether or not the work is continuous. It is reasonable to expect those who choose to undertake forms of gainful work which are not continuous, and who seek to become qualified for a Job Commitment Bonus, to take responsibility for their working lives by planning to engage in sufficient alternative gainful work so that they are consistently part of the workforce. Further, any form of gainful work may come to an end. Therefore regardless of the type of gainful work a person undertakes they may need to find alternative work in a timely manner to prevent breaks in the continuity of their gainful work.
Since a wide range of gainful work and a number of different jobs or types of gainful work can be undertaken to achieve qualification for a Job Commitment Bonus as outlined below, people would generally have a number of options to enable them to maintain their continuity of their gainful work.

The Amending Act means that persons are able to meet the 12 or 24 month continuous work requirement through numerous jobs in combination, not only by one job spanning that 12 or 24 month period.

Accordingly, if one job undertaken by a person came to an end, the person could continue to meet the continuous work requirement by commencing in another job within five business days of the end of the first job, or by having commenced another job before their first job ended and continuing in that job, if the total of any periods between jobs does not exceed 28 days in a work period.

In addition, a period in between jobs of more than five business days will not prevent the person from meeting the continuous work requirement if the Employment Secretary is satisfied that in all the circumstances it is appropriate for that period to not break the continuity of the person’s gainful work. Similarly, where a person has a number of periods away from gainful work between the end of gainful work and the start of other gainful work, then a period which causes the total of those periods to exceed 28 days in a work period (or any subsequent period between jobs or gainful work) would not break the continuity of the person’s gainful work if the Employment Secretary is satisfied that in all the circumstances it is appropriate for that period to not break the continuity.

The mere fact that a person’s work is not full-time but is part-time or casual work, or is shift work, would not prevent the person from being able to meet the continuous work requirement. A person could therefore engage in any of these types of work to prevent the continuity of the work period being broken.

Further, a person will be able to take authorised leave from their employment and still be paid a Job Commitment Bonus if otherwise eligible. This will apply whether the leave available to a person from their employment is paid or unpaid. However in the case of unpaid leave, the period or periods of leave must be no more than 28 days in total in the first work period and no more than 28 days in total in the second work period.

The Amending Act and this Determination therefore mean that a wide range of gainful work, and a number of different jobs or types of gainful work, can be undertaken in order for a person maintain the continuity of their gainful work. Taking account of the variety of ways in which a person could establish 12 or 24 months of continuous gainful work despite any differential treatment of employment types which the Determination may involve, such treatment is proportionate to the aim of the Job Commitment Bonus.

Conclusion

The Determination is compatible with human rights because to the extent that it may have an adverse impact on human rights, the impact is reasonable and for legitimate reasons.

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3 Provided that the work is not of a kind referred to in the legislative instrument made under subsection 861(8) of the Act as being a kind of work which will not attract a Job Commitment Bonus.