# EXPLANATORY STATEMENT

## Social Security (Class of Visas—Newly Arrived Resident's Waiting Period for Special Benefit) Determination 2011

### Summary

The *Social Security (Class of Visas—Newly Arrived Resident's Waiting Period for Special Benefit) Determination2011* (the Determination) is made under paragraph 739A(8)(c) of the *Social Security Act 1991* (the Act).

### Purpose

The purpose of the Determination is to set out the visa subclasses, as provided in section 3 of this Determination, for those family members that are no longer regarded as being exempt from the newly arrived resident's waiting period.  Accordingly, a person who is a family member and holds a visa that is in a class of visas determined by the Minister under subparagraph 729(2)(f)(v) of the Act and is in a class of visas determined by the Minister for the purposes of paragraph 739A(8)(c) of the Act will be subject to the newly arrived resident's waiting period for special benefit.

### Background

Special benefit is generally only available to Australian residents (as defined in subsection 7(2) of the Act) if they meet the qualification requirements, including an inability to earn a sufficient livelihood, and have served the two year newly arrived resident's waiting period.

There are, however, some exceptions to the requirement that a person serve the newly arrived resident's waiting period before being able to apply for special benefit. For example, a permanent visa holder who is subject to the newly arrived resident's waiting period may apply for special benefit if they can demonstrate that they are in financial hardship and have suffered a substantial change in circumstances beyond the person's control.

In addition, certain temporary visa holders qualify for special benefit if, they are the holder of a visa which is included in a determination made by the Minister under subparagraph 729(2)(f)(v) of the Act.

Some of these temporary visa holders (for example, criminal justice stay visa holders) do not have to serve the special benefit newly arrived resident's waiting period as a result of a determination made under subparagraph 739A(6) of the Act. Special benefit is payable to these temporary visa holders if they can demonstrate that they are in financial hardship.

The partner/spouse/interdependency visa holders currently have an exemption from the special benefit newly arrived resident's waiting period as they are considered to be a 'family member' under paragraph 3(1)(e) or (g) of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* (the 1997 Act).  'Family member' is defined in subsection 7(6D) of the Act.

Accordingly, these temporary visa holders may receive special benefit, if they can demonstrate that they are in financial hardship, without being subject to the newly arrived resident's waiting period.

However, Schedule 2 of the *Social Security and Other Legislation Amendment Act 2011* removes the exemption from the newly arrived resident's waiting period for family members under paragraph 3(1)(e) or (g) of the 1997 Act. With respect to claims for special benefit lodged on or after 1 January 2012, paragraphs 3(1)(e) and (g) of the 1997 Act will no longer apply to a person if the person holds a visa that is in a class of visas determined by the Minister under subparagraph 729(2)(f)(v) of the Act and is also in a class of visas determined by the Minister for the purposes of paragraph 739A(8)(c) of the Act.

As a result, these visa holders (refer Section 3) will be subject to the special benefit newly arrived resident's waiting period under section 739A of the Act unless, in the Secretary's opinion, they can demonstrate that they are in financial hardship and the person has suffered a substantial change in circumstances beyond the person's control (subsection 739A(7)).

**Explanation of the Provisions**

**Section 1** of the Determination states the name of the Determination.

**Section 2** states that the Determination commences on 1 January 2012. Commencement is to coincide with the commencement of the amendments made to the Act by Schedule 2 of the *Social Security and Other Legislation Amendment Act 2011*.

**Section 3** provides that any person who is a holder of the following visas will be subject to the newly arrived resident's waiting period;

        (i)     Subclass 309 Partner (Provisional);
        (ii)    Subclass 309 Spouse (Provisional);
        (iii)   Subclass 310 Interdependency (Provisional);
        (iv)   Subclass 820 (Partner – Temporary);
        (v)    Subclass 820 (Spouse – Temporary); and
        (vi)   Subclass 826 Interdependency (Provisional).

**Consultation**

The Department of Immigration and Citizenship (DIAC) and the Department of Human Services (DHS) were consulted in the making of this Determination.

We understand that DIAC is amending the *Migration Regulations 1994* to remove the requirement for an assurance of support for the visa classes specified above. These visa classes currently have a discretionary assurance of support, which will no longer be required due to the amendments to the Act aligning access to special benefit for these temporary visa holders with that available to permanent visa holders, that is, financial hardship and a substantial change in circumstances. Consultation was undertaken with DIAC to ensure that the appropriate visa classes were specified in this Determination in accordance with their Regulations.

There has been ongoing and regular consultation with DHS (Centrelink), to ensure that their reference manuals are up to date and reflect the current application of the amendments to the Act, which will facilitate efficient administration of the Act and Centrelink service delivery.  In addition, consultation with DHS (Centrelink) about the changes to section 739A of the Act and the making of this Determination will ensure that the assurance of support scheme, in practice, operates satisfactorily.

**Regulatory Impact Analysis**

This Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.