

EXPLANATORY STATEMENT

Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2014

Purpose

The purpose of this Determination is to exempt holders of a Subclass 449 (Humanitarian Stay (Temporary)) visa from the newly arrived resident’s waiting period for Special Benefit.

Background

A person may be qualified for special benefit if, among other things, they are an Australian resident or the holder of a visa that is in a class of visas determined by the Minister for the purpose of subparagraph 729(2)(f)(v) of the *Social Security Act 1991* (the Act). The *Social Security (Class of Visas – Qualification for Special Benefit) Determination 2014* determines Subclass 449 visas as a class of visas for the purpose of subparagraph 729(2)(f)(v).

Subsection 739A(1) of the Act provides that subject to some exceptions, certain persons are subject to a newly arrived resident’s waiting period. This includes a person who enters Australia (paragraph 739A(1)(a)).

Subsection 739A(5) of the Act provides that if a person is subject to a newly arrived resident’s waiting period and neither subsection 739A(3) nor (4) apply to the person, then the waiting period starts on the day on which the person first entered Australia or becomes the holder of a permanent visa, whichever occurs last, and ends 104 weeks after that day.

Subsections 739A(3) and (4) apply to persons who have applied for or held certain visas determined by the Minister in a legislative instrument. The Minister has not determined a Subclass 449 visa for the purpose of either subsection 739A(3) or (4). This means that unless an exemption applies, the newly arrived resident’s waiting period set out in subsection 739A(5) would apply to the holder of a Subclass 449 visa.

Subsection 739A(6) provides that the newly arrived resident’s waiting period in subsection 739A(1) does not apply if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister, by legislative instrument, for the purpose of subsection 739A(6).

Explanation of the provisions

Section 1 sets out the name of the Determination.

Section 2 provides that the Determination commences on the day after it is registered.

Section 3 provides that Subclass 449 (Humanitarian Stay (Temporary)) is a class of visa for the purpose of subsection 739A(6) of the Act. The effect of this is to exempt Subclass 449 visa holders from the newly arrived resident's waiting period for Special Benefit. This means that if a Subclass 449 visa holder meets the other criteria for the grant of Special Benefit, they will be eligible to be paid Special Benefit immediately.

Other legislative instruments made for the purpose of subsection 739A(6) determine visa classes that are granted for humanitarian reasons. As Subclass 449 visas are also granted for humanitarian reasons, it is appropriate to also exempt the holders of those visas from the newly arrived resident's waiting period for Special Benefit.

Consultation

No consultation was considered necessary for the purpose of this Determination.

Regulation Impact Analysis

The Determination does not require a Regulation Impact Statement because the Determination is not regulatory in nature, will not impact on business activity and will have no or minimal compliance costs or competition impact.

Statement of Compatibility with Human Rights

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

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The *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2014* 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 *Social Security (Class of Visas – Newly Arrived Resident’s Waiting Period for Special Benefit) Determination 2014* (the Determination) is made under subsection 739A(6) of the *Social Security Act 1991*.

The purpose of the Determination is to exempt the holders of a Subclass 449 (Humanitarian Stay (Temporary)) visa from the two year newly arrived resident’s waiting period for Special Benefit. This will ensure that a Subclass 449 visa holder who meets the payment eligibility criteria for Special Benefit may be paid immediately subsequent to the grant of a Subclass 449 visa.

Australia is obliged under Article 24 of the 1951 Convention Relating to the Status of Refugees (the Refugees Convention) to accord those found to have engaged Australia’s protection obligations the same or similar treatment in relation to social security as is afforded to Australian permanent residents and citizens. Providing that Subclass 449 visa holders have an exemption from the Special Benefit Newly Arrived Residents Waiting Period will assist in meeting those obligations.

Human rights implications

The Determination engages or gives effect to the following human rights:

- the right to social security as recognised in Article 24 of the Refugees Convention and 1967 Protocol Relating to the Status of Refugees (the Protocol); Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to an adequate standard of living in Article 11 of the ICESCR and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).

The Determination will assist Australia to meet its international obligations under the Refugees Convention and the Protocol, the ICESCR and the CRPD by providing an exemption to the waiting period in which a Subclass 449 visa holder will be qualified for Special Benefit. The Determination will also ensure an adequate standard of living for those illegal maritime arrivals whose claims for protection are found to be

valid and who require financial assistance by providing more immediate access to social security payments.

Conclusion

This Determination is compatible with human rights as it promotes the right to social security and an adequate standard of living for Subclass 449 visa holders.

Kevin Andrews, Minister for Social Services